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EVENINGS WITH A REVIEWER;

OR,

MACAULAY AND BACON.

BY

JAMES SPEDDING.

WITH A PREFATORY NOTICE BY

G. S. VENABLES.

"Nam isti homines, stylo acres, judicio impares, et partis suæ memores, rerum minus fideles testes sunt." — BACON.

IN TWO VOLUMES.

VOL. II.

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EVENING THE ELEVENTH.

B.

We shall soon be ready to deal with the case of Oliver St. John; but as it grew immediately out of the circumstances which brought the parliament of 1614 to an abrupt termination, we must first enter a little further into particulars, as they may be gathered from independent sources.

A.

Bacon being now Attorney-General; I think you said.

B.

Yes; his course of *rapid* advancement, which Macaulay dates from the beginning of James's reign, has now really begun; for certainly I cannot call it rapid advancement for a man of Bacon's position, opportunities and qualifications, to make his first step at forty-six and his second at fifty-two; especially as there had been no lack of vacancies. It had lain directly in his way to be Solicitor in 1604, Attorney in 1606, Chief Baron in 1607, and now in 1613 Chief Justice of the Common Pleas or the King's Bench. And even during the year immediately preceding, his claims had been twice passed over in favour of obscure men; for the Mastership of the Wards becoming vacant in May 1612 by the death of Salisbury, was given to Sir George Cary; and becoming vacant again in October by the death of Sir

G. Cary was given to Sir Walter Cope. So that while he had had more opportunities for rapid advancement than any other distinguished lawyer of his day, he had in fact risen more slowly, I believe, than any one of them.

Now however, at last, he is going to rise rapidly. In the autumn of 1613 Sir Thomas Fleming, Chief Justice of the King's Bench, died; and Bacon, making a push, got Coke transferred to that place from the Common Pleas, the Attorney to Coke's place, and himself to the Attorney's.

A.

Making a push? Then that arrangement was brought about by him.

B.

Yes; and much against Coke's will, who is said to have acceded, not without tears; though it was an advance in dignity and accompanied with all marks of honour. I am not sure that it ought to rank as one of Bacon's best day's work; for I cannot think that Coke, with all his law, was well qualified for a judge in criminal causes. It is true that he was fearless and upright enough, but he was wanting (as it seems to me) not only in true impartiality, but also in the faculty of weighing moral evidence; being precipitate in taking first impressions, obstinate in sticking to them, credulous to all that favoured them, deaf to all that made against them; and apt to pronounce judgment before the case had been half heard. These however are sentiments in which few people will agree with me now, and probably nobody would have agreed with me then. The whole Court of Common Pleas (down to the very clerks they say) wept with him when he left them; but it was only as we weep for our friends when they are going to a better place. The great oracle of the Law, and the great champion of the Bench, in its now continual contests with the Crown, could not have been thought out of his place as Lord Chief Justice of England. The only fear entertained by his contemporaries, —or I should rather say, the only fear which I have seen

expressed by a contemporary,—was that he might possibly "turn Attorney again."

A.

Perhaps Bacon *hoped* he would.

B.

Very likely. In Bacon's eyes, a little change in that direction would have been a good change for all parties. Indeed he did suggest to the King as one of the advantages of the arrangement, that Coke "would think himself near a privy councillor's place, and thereupon turn obsequious." But the King gave away that chance by making him a privy councillor at once.

And now for the parliament.—

What Bacon's general views were as to the measures which should be propounded, we have already seen. Of the particulars some further light may be obtained from a list (extant in the British Museum *) of the titles of the bills that were prepared, or under consideration. They are distributed under several heads, thus:—

"1. Bills to be drawn by his Majesty's direction for the good and comfort of his people upon certain of the propositions exhibited to his Majesty and to be offered to the parliament.

"2. Bills upon certain other propositions exhibited to his Majesty,—to be ready if they be sued for by the Commons.

"3. Bills for the general good of the Commonwealth upon other heads besides those that were propounded.

"4. Secret bills.

"5. Other bills to be propounded, not yet consulted upon."

Under the first four heads there are not less than thirty-one titles. But since the titles only are given, it is not much that one can make out beyond the general intention.

A.

For our present purpose, it is of some consequence to ascertain even that.

* Cott. MSS. Tit. F. iv. fo. 339. Harl. MSS. 6258. A.

B.

True; and we will try to make it out.

The first and second class,—the bills upon the propositions *propounded* to the King,—are chiefly grounded upon complaints made or wishes expressed in the last parliament, and aim at the removal of various inconveniences and vexations arising out of the old feudal tenures. There is one however which deserves special mention, partly as not coming exactly under this description, but chiefly because it was a favourite measure of Bacon's; he had recommended it long before to Queen Elizabeth; touched on it from time to time in his letters to King James; prepared it for this parliament; and shortly after the dissolution, urged it again as a measure worthy to be proceeded in by way of preparation for the next. This was the appointment of "certain commissioners, twelve lawyers and twelve gentlemen of experience in the country, for the review of the penal laws and the repeal of such as are obsolete or snaring, and the supply, where it shall be needful, of laws more mild and fit for the time; and thereupon to prepare bills for the next parliament."

In the third class,—the bills for the general good of the commonwealth—the objects aimed at are, first, the extirpation of *piracy;* a matter of great public interest in the then early youth of commerce. 2ndly, The suppression of the destructive practice of *duelling,* which was then alarmingly fashionable and fatal among the nobility and gentry. 3rdly, The restraint of seditious publications concerning the papal authority; dangerous things then, (though I will not say that penal statutes were the best weapons of defence against them,) for they not only tended in theory to justify resistance to the constituted authorities of the land as a religious obligation, but did actually animate zealots to engage in treasons of the most murderous kind. 4thly, The discouragement of the growing tendency of population to crowd into London, and of the consumption of gold and silver upon dress. 5thly, The encouragement of tillage and of timber.

A.

Sumptuary laws, and protection! You do not expect to get your friends any credit for these now-a-days?

B.

No. I am only telling you what they were. It is the purposes, not the wisdom, of the government that I wish to illustrate. These were all, according to the best opinions of that day, measures for the good of the commonwealth. Everybody believed not only that the effects at which they aimed would promote the safety and sound condition of the country (which I partly think was true), but that they might be carried into effect by acts of parliament, which was a mistake. Even now, it is not as being bad in themselves that they are condemned by the learned, but as being beyond the reach of legislation; a large accumulation of political experience having shown that interference of the legislature with such matters has always done more harm than good; till it is almost received as an axiom in politics that the sole business of government is to secure to every man the liberty of doing exactly what he likes.

A.

You believe that?

B.

Why, no. It may be true of this or that government; it may be true perhaps of all governments that have been or are likely to be; just as it is true of an unskilful doctor, that he had better leave the patient to himself, and that, if he interferes further than to prevent other doctors from interfering, he will do more harm than good. But as a general and unqualified proposition I confess it is to me incredible. No doubt *unskilful* interference, whether with the body of the state or with the individual body, is worse than none at all. But is all interference by government *necessarily* unskilful? or all skilful interference necessarily

injurious? Surely it cannot be. Consider the universal tendency of mankind to grasp at the immediate and apparent good, neglecting the remote and the real; consider that not one of the separate departments of the social community,—the little states that make up the great state,—not a manufactory, nor a bank, nor a company, nor a shop, nor a school, nor a family,—can be prosperously governed without continual supervision and interference by the head; without some system under which the members (who are the subjects) are made, whether they like it or not, to do what the head (which is the legislature) knows to be good for the whole concern; consider all this, and then tell me whether, when the parts of the machine will none of them go at all without continual interference, it is likely that the total machine will go quite right if it be only let alone. If indeed the welfare of a nation consisted in letting each man have as much as possible of what he wishes for,—or if men in general desired only what is really or permanently for their good,—it would be true. But since men are continually wishing for things which it is not good either for themselves or the community that they should have, one cannot but think that a statesman who understood the state as well as a merchant understands his trade, might exercise a salutary control over their choice. He should certainly be able to foresee some evils which the individual members cannot foresee; and to believe that nothing *can* be done to prevent an evil foreseen, is hard.

Take for illustration this very subject of the encouragement of agriculture, or (to quote the title as it stands) "An Act for the supply of laws concerning depopulation and tillage." This was a favourite subject of Bacon's. He used to bring in bills for the purpose in Queen Elizabeth's time; and in his History of Henry VII. he selects an act of the kind for special comment and approbation. Suppose we step a little out of our way to examine the question.

A.

It will not be altogether out of the way. To judge of a

man's public conduct one should know what public interests he *thought* were at stake.

B.

True; as well as those which really were so; it being his business to act for what he thought the best, whether he were right or wrong in the thinking.—

Well then; the object of those acts was to check the practice which was becoming more and more prevalent, of what they called *inclosures;* that is (as I understand it), the buying up of small properties by great proprietors, who converted them from arable into pasture. This occasioned a diminution of population in those parts, and therewithal a decay of towns, churches, tithes, &c.

A.

Ah! who would have expected to find the germ of the Deserted Village in the Statutes at large?

> "Amidst thy bowers the tyrant's hand is seen,
> And desolation saddens all thy green:
> One only master grasps the whole domain,
> And half a tillage stints thy smiling plain:
> No more thy glassy brook——"

B.

Yes.

> "Ill fares the land, to hastening ills a prey,
> Where wealth accumulates and men decay——"

and so forth. The sentiment, whatever political economy may say to it, has been familiar to the heart of man at all times. And even within the last two or three years, we have heard the old complaint echoed from the very land of Adam Smith in consequence of the same process going on in the Highlands of Scotland. But it is not the sentimental aspect of the question that I am dealing with. I was going to say that this change in the character and distribution of the population (for I suppose the change was really rather

in the distribution than in the total amount) had a consequence which in those days, though not now, deeply concerned the security of the kingdom: and that this consequence must in the natural course of supply and demand have been left (as not immediately concerning either the demander or the supplier) quite unprovided for. There was then no standing army. In case of war, either at home or abroad, success depended upon the fitness and readiness of the general population of the country to turn soldiers. Now grant, what I suppose is true, that the *wealth* of the kingdom,—its total stock both of men and of the things men want,—would be increased instead of diminished by the process which was going on;—the more luxuries the more labour, the more labour the more people, the more people the more food;—therefore that the increase of provision *for times of peace* would be best cared for by leaving each man to help himself according to his own appetite and means. Does it follow that provision *for a time of war* might be equally trusted to care for itself? Surely not; for that was a chance which neither the buyer nor the seller was providing for or thinking of. It did not concern them for the present; and to care for the future, though it was all men's interest, was no man's business.

Here then was a case in which the legislature, provided always that they thoroughly understood it, might properly interfere. And this is in fact the ground upon which Bacon rests his commendation of Henry VII.'s act. The objections of the political economist he seems to have been (partly at least) aware of.

"Inclosures," he says, "they would not forbid, for that had been to forbid the improvement of the patrimony of the kingdom: nor tillage they would not compel, for that was to strive with nature and utility."

It was not therefore the increase of *wealth* that he looked for. But the nation wanted *soldiers* as well as wealth. And Henry knew that as long as there were plenty of substantial yeomen in the country there would be no want of soldiers. He knew also that in every house to

which a certain quantity of land was attached, there must dwell a man of some substance. By providing therefore that the land should not be separated from the houses,—by enacting that all farm-houses of a certain standard should be kept up with a due proportion of land about them,—he "did in effect" (to use Bacon's words) "amortise a great part of the lands of the kingdom unto the hold or occupation of a *yeomanry*, or middle people, of a condition between gentlemen and cottagers or peasants." Now these (he says) are the men that make good infantry. For want of this class, France and Italy (having "much people but few soldiers") were obliged to employ mercenaries:

"—whereas the King saw that contrariwise it would follow that England, though much less in territory, yet should have infinitely more soldiers of their native forces than those other nations have. Thus did the King secretly sow hydra's teeth, whereupon (according to the fiction of the poets) should rise up armed men for the service of the kingdom."

A.

"But a bold peasantry, their country's pride,
When once destroy'd— "

I thought those old statutes had all been exploded by experience, not merely as uneconomical but as inoperative.

B.

I dare say they were enforced with difficulty and imperfectly, and were found in many ways inconvenient. The perpetual necessity of new acts for the *supply* of former laws seems (as Hume remarks) to prove that. But those tendencies which they could not altogether resist, they may nevertheless have retarded. Totally inoperative they can hardly have been, or Bacon could never have quoted them as instances of successful legislation.

This, however, is not what I am speaking of. I am speaking of the intention, not the operation, of them. I referred to this act as an instance of interference by the legislature with the natural course of supply and demand,

which, supposing it effectual, cannot be pronounced injurious or impolitic: the object being not to teach people how to get what they are all in pursuit of, but to prevent them from losing something which when lost they will all want, yet which if left to themselves they will certainly let slip.

But to discuss Bacon's ideas of political economy is not our business at present. No doubt he shared the errors of his age in that department, and thought the legislature might interfere with good effect in many ways which experience and statistics have condemned as injurious; and which, by the way, are probably more injurious now than they were then.

A.

How should that be?

B.

Because the arts of trade having been studied so much more earnestly and assiduously and therefore successfully than the art of government, the *members* of our social establishment are now wiser than the head; wiser not only in their own department, but in his also. The merchant and the manufacturer see further into the future than the prime minister, and can better provide against it. The difference, I dare say, existed then; but it was probably not so great as it is now; for merchants are now better trained for their business; statesmen I think not quite so well.

A.

Certainly, if I wanted to know whether there would be a war six years hence, I would sooner trust the prophetic soul of the three per cents than the opinion of the cabinet. —Well, so much for the commonwealth bills that had *not* been asked for.

B.

Now we come to the "secret bills;" by which I suppose was only meant measures under the consideration of the council, which it was not thought expedient to divulge;

that so they might be brought forward or kept back according to the turns or exigencies of the time.

One of these is a bill "for the better administration of justice and the declaration and limitation of the jurisdiction of courts."—This was a subject at that time of pressing importance. For Sir Edward Coke, whose ruling passion was the love of power, and whose course, which seems at first sight so inconsistent, was in fact from first to last one consistent effort to aggrandize his own office for the time being, had (ever since he became a judge) been laying about him on all sides to drag business into his own court; so that none of the other courts had any peace: neither the Chancery, nor the Star Chamber, nor the ecclesiastical courts, nor the provincial councils, could get on with their work for his prohibitions: and this, being done in the name of the law, passed among the people for pure patriotism: and (worst of all) the King coming in as umpire, involved the Crown itself in the quarrel;—till the suitor was in danger of being torn to pieces in the struggle while the courts were disputing which had the right to do him justice. Sir Edward Coke, I dare say, knew no better. But the evil of this state of things was, we know, strongly felt by Bacon. In his essay on Judicature, published the year before, he mentions among the "bad instruments" of courts, those who "engage them in quarrels of jurisdiction." After his fall, he suggested the "limiting of the jurisdiction of courts" as a fit subject for his pen, if the King chose to employ him. In his "Advice to Villiers," written a year or two after the time we are speaking of, he says:

"There are many courts, some superior, some provincial, and some of a lower orb. It were to be wished, and is fit to be so ordered, that every of them keep themselves within their proper spheres. The harmony of justice is then sweetest when there is no jarring about the jurisdiction of the courts; which methinks wisdom cannot much differ upon, their true bounds being for the most part so clearly known."

To improve this harmony was, I presume, the object of this bill.

Another of the same class was "for the better proceeding in the plantation of Ireland" (meaning Ulster, no doubt), the details of which one would like to see. For that plantation holds out so well that it seems likely to weather the storm under which the rest of Ireland is sinking.—A third was for increasing the wealth of the realm by fishing with busses;—an attempt, I presume, to put the Englishman in a way to follow the example of his opposite neighbour the Dutchman, who had been long working a very profitable mine in our seas.—A fourth was for the regulation of the great staple manufacture of the kingdom; or (as the title runs) "for a more perfect constitution for the uttering of clothes dyed and drest;" and would probably have touched the great monopoly of the merchant adventurers, in whose hands the trade was then languishing; insomuch that an attempt was made the next year to transfer it to a new company, which proved however unequal to the task.

A.

I suppose it would only have been the exchange of one monopoly for another.

B.

Very likely. I have no reason to suppose that it was founded on the true principles of free trade.—A fifth related to the liberties of corporations; perhaps a municipal reform bill.—A sixth was aimed against usury; in which I suppose no good could have been done.—A seventh was "for a more certain order in granting letters of administration."—An eighth for "the beautifying and better government of the city of London and its suburbs."—But the most curious,—at least the one which you would have least looked for,—is a *parliamentary reform bill;* "An act for the suppressing and supply of boroughs of parliament, according to the present state of the towns of the realm."

A.

What? Were there rotten boroughs in 1614?

B.

There had been rotten boroughs long before that; so many that Bacon once cited the fact as a proof that the kingdom must have been far better peopled in former times than it was then. But who would have suspected King James and his Attorney-General of being parliamentary reformers?

A.

I am afraid it proves that the arts of corruption were not far advanced.

B.

But does it not also prove that corruption was not the art they were studying? nay that, for means to influence the Commons, they were looking quite in the opposite direction? They must have thought that the more truly the house of Commons represented the *people*, the more likely it was to support the Crown. A mistake possibly, but a very constitutional one. For if the King had been thinking of hiring representatives of *himself* (as governments have done since), he could never have thought of parting with the rotten boroughs, where he could have made so much the safest and cheapest bargain. And whatever you may think of the King, it is certain that Bacon did look to an unpacked house of Commons, frankly and confidently appealed to, and then left to its own natural impulses, as the only sure basis upon which the Crown could rest. All his advices to the King, and all his own proceedings from first to last, tended that way. And when you consider how well he must have known the temper of that assembly, having been a watchful observer and an active member in every parliament that had sat for the last thirty years—(and when, before or since, did such an eye to observe and such opportunities of observation meet in the same person?)—when you consider too to what *kind* of house he desired that the appeal should be made, viz. a house composed "of

the greatest gentlemen of quality of their country, and ancient parliament-men, and the principal and gravest lawyers, and the chiefest merchants, and likewise travellers and statesmen;"—when you consider how confidently he advised that a house so composed should be left to its own free deliberations, without any canvassing or packing either within or without;—you must surely take it as a proof that he either thought the policy of the government already deserving of public support, or wished it to be so altered as to become deserving. Neither can such a proposition as this for transferring the franchise from the decayed to the populous boroughs (for such we may, I think, presume the object of the bill to have been), be considered as other than a proof that he was sincere.

A.

Supposing the proposition to be his own.

B.

True; of which I confess I have no further evidence than its accordance with the uniform spirit of his advice and policy. But say that it was not his own, still it stands as evidence of the sincerity of the government with which he was acting, and indicates that their policy was (as they thought) patriotic.

A.

It does tend that way.—And what next? A bill for allowing counsel to prisoners, I suppose; or for making judges irremovable except by an address from the two Houses.

B.

No; not quite that; nor a Catholic relief bill. But there were some measures for reducing the cost of justice. Here, for instance, is a bill "for limiting the fees of sergeants, counsellors at law, and their clerks." Here is another for avoiding fees exacted by customers, controllers and their inferior officers. Another to limit the time for

beginning suits. Another to suppress certain liberties and exempted places;—Alsatia must have been in danger there. A fifth against deceits in weights and measures. All these must have been intended for the benefit of the subject. But as they are among the bills not yet consulted upon, I shall say no more respecting them.

And indeed I have now told you all I know about the preparations for this parliament. The various propositions were referred by the King to his Learned Counsel; but they, having too much to say for the compass of a letter, gave their answer by word of mouth; and of what they said there does not exist, so far as I know, any account. From what I have stated however this at least may be inferred,—that this parliament was not meant to be a sham. Though want of money may have been the principal motive for calling it, it was not the less called for the despatch of divers weighty affairs affecting the great interests of the kingdom.

They met on the 7th of April. The composition of the House was not auspicious; and Bacon, who had (as you remember) expected no good from "the brigues and canvasses of which he had heard too much," must have perceived at once that one of his worst anticipations had been realized. In a house consisting of four hundred and seventy-five members, there were three hundred who had never been in parliament before; about three to two; terrible odds against order and regularity, and that conformity to ancient usage by which alone any numerous popular assembly can be preserved from mere confusion and distraction.

Not less unpropitious was the temper in which they met; the first day's proceedings showing that the House was already possessed with an extreme jealousy (though it did not at once break out into disturbance) of the rumoured "Undertaking."

But the worst omen of all perhaps, as indicating a captious and unaccommodating disposition, was the question which first fell under debate. Bacon was now Attorney-General; an officer whose presence in the House of Com-

mons is with us considered so necessary, that no man would be appointed to the place who was not sure of a seat. But on this occasion the fact of his holding the office was urged as a ground for *excluding* him from the house.

A.

A pretext, or a true ground?

B.

A true ground, undoubtedly. The result proved beyond question that the objection was to the principle, not to the person. Personally, it is clear that Bacon was still as he had always been, a great favourite with the house; and I do not find that he had fallen under any suspicion of being connected with the "Undertakers." No; it was as an officer retained in the service of the Crown that he was objected to. It was the very first question raised in the Committee of Privileges: "Could an Attorney-General be elected to serve in parliament? was there any precedent?" By an odd accident it happened that none could be found exactly in point. Privy councillors had constantly been elected and served. King's Sergeants had been elected and served; King's Solicitors had been elected and served; and no objection had ever been taken. Nay, the Attorney-General himself had, in the very last parliament, *served;* but then he had been *elected* before he became Attorney-General; and therefore his case was adjudged to be no precedent. Upon this a long and eager debate arose, which is remarkable for two things; first, for the absence of all trace or hint of any personal distrust or dislike of Bacon in any quarter; which ought to be surprising to the reviewer;—secondly, for the resolution in which it terminated; which I think will surprise you. For they resolved that no person holding the office of Attorney-General should be eligible in future; but that for the present parliament Bacon should be allowed to sit. The principle therefore that the Attorney is *ex officio* ineligible (grounded, of course, or pretended to be

grounded, on precedent), was affirmed; but a special exception was made in favour of the occasion and the man.

This I say was a bad omen of the disposition of the House towards the King's business. For it could not be doubted that the absence of any precedent exactly in point was merely an accident; while on the other hand it was not less plain, that the course of precedents, rightly interpreted, was *in favour* of the Attorney's sitting, not against it. For upon what principle could he be excluded, that did not apply with equal force to the Solicitor and the rest of the Learned Counsel; and indeed to the Secretary of State and all the Privy Councillors? for they were all of them by their office as much engaged to the Crown as he. Now the precedents were in favour of all these sitting. Nay, with regard to the Attorney himself, the question had never been raised till the parliament immediately preceding; and how was it settled then? After being slightly stirred it was silently dropped, and the Attorney was allowed to hold his seat; which certainly seems very like a silent acknowledgment of his *right* to sit. And as for the distinction that was drawn between the two cases,—viz. that the last Attorney had been elected before his appointment, whereas this one had been appointed before his election,—as if a member might be Attorney-General, but an Attorney-General might not be a member,—there was clearly no sense in that; the interfering duties and disturbing influences involved in the office being precisely the same in both. Therefore that they were forced by their precedents and by a fear of innovation to take this exception (however it might be pretended for decency and allowed to pass from politeness) no man could really believe. The truth is that the exception was itself an innovation: an innovation suggested by a growing jealousy of the influence of the Crown over the deliberations and votes of the Commons;—which, as I said, foreboded no good to the King's business; especially as nothing had as yet proceeded from the King himself but offers of grace and concession, and assurances of affection and confidence.

A.

But they did agree to let Bacon remain?

B.

True, but why? for there seems at first sight some inconsistency in that.

A.

Yes; how do you account for it?

B.

If you look through the notes of the debate which ended in that remarkable resolution, you will find towards the conclusion some expressions which explain it. You will find traces of a confidential intimation to the House that Bacon had the charge of the *Bills of Grace*. They feared no doubt (for that part of the King's business they were ready enough to advance) that those bills could not be got on so well without him. I am afraid therefore that the concession cannot be taken as an indication of a more favourable disposition.

But besides the ill omen for the future, there arose out of this one positive and present disadvantage. While this matter was in deliberation (which lasted five days) Bacon was of course sequestered. During that time, the King having made his speech with all his offers of grace, it was reported to the house by Sir Henry Yelverton, the Solicitor-General; a learned lawyer, an eloquent speaker, and a clever man, but somewhat rash and rhetorical, and I think inconstant, from want of anchorage; capable at any rate of passing suddenly from extreme to extreme (a character which can never command popular respect), and at this time labouring under the unhappy charge of tergiversation, having been formerly one of the favourite speakers on the popular side, and but recently come over to the other. Now the opening of this subject to the House was a task of some delicacy. Very much must have depended upon its being

done in such a tone and spirit as to give an impression of confidence, and take away all appearance of solicitude. And that must have depended upon a certain tact which could not be imparted to another man. The task would naturally, I believe, have been executed by Bacon himself—who could undoubtedly have done it best.

On Tuesday the 12th of April he took his seat again in the house; and must have looked about him with some anxiety to see what weather was coming. The first motion was for bringing in a bill concerning Impositions. That could bode no good.—What next? Discussions concerning ecclesiastical jurisdiction! Dirty in that quarter too. Bad weather for so damaged a vessel as the question of supply to put to sea in.

> "I saw the new moon late yestreen
> With the old moon in her arms:
> And I fear, I fear, my master dear,
> We shall have a deadly storm."

However out she must go before it grows worse. So presently up gets Sir Ralph Winwood, who has been Secretary of State exactly a fortnight, and was never in parliament before;—sets forth the miseries of the state for want of money; the navy in danger of dissolution; the Cautionary Towns, for want of pay, like to mutiny; the disaffected party in Ireland treating with the Pope to come next summer; troubles in Germany; France and Spain upon the point of uniting by a double marriage; England through her poverty exposed in all other parts to contempt and scorn:—he compares the King's offered graces to another Magna Charta; and concludes by moving (contrary to all precedent in the first week of the session) for a cheerful and speedy contribution.—How will this be taken?—The first three or four speeches settle that question. The sense of the House is evidently against giving any present answer. The motion, it is thought, comes too early; should be deferred till the bills of grace are brought in. But this is not the worst. Presently some one mentions the word "Under-

taker;" and forthwith the whole House opens upon that scent, and there rises a confusion of tongues, criminating, recriminating, excusing, deprecating, from which one can only gather that that sore is too tender to be touched even with the healing ointment. One thing at least is clear,—that the motion was premature, and that the King's business can make no way at present.

A.

Had Bacon nothing to say?

B.

Yes, it was upon this motion for supply, but before the debate had begun to diverge, that he made his first speech. The notes which remain of it are, as usual, fragments and snatches, set down to assist the memory of the reporter rather than to inform anybody else. But the general tenour of the speech may be gathered from them; and as it is interesting to know how he tried to make the best of another man's blunder, I have attempted to fill up the outline. Here is a report, such perhaps as might have appeared in a weekly paper, if there had been such things then.

The Attorney-General thanked the house for their favour in allowing him to remain. If they had dismissed him they should have had his best wishes; since they were pleased to retain him, they should have his best offices.

For the matter before the House, there were but three ends at which a pertinent speech should aim—to explain how the case stood; to persuade consent; and to trace out the best means of effecting the thing propounded. And after what had been spoken by those before him to each of these points, there remained little for him to add.

For the first, they were to consider the state in which the kingdom stood; what dangers hung over it, and how they were provided to meet them. And let no man think because they were in peace that they were out of danger. It was not the mere being at war or being at peace that made danger imminent or distant, and a supply of treasure

for provision against it necessary or unnecessary: it was the much or little, the nearness or remoteness, of the materials out of which dangers are bred. A house of wood was in greater danger every night, than a house of stone, when the next street was burning: more things might happen that would set it on fire. In like manner, a state of peace which may be turned into war at another's pleasure, is fuller of real peril to a nation than a state of war which may be exchanged for peace at one's own. A war, for example, which was undertaken as wars sometimes were only for a flag of glory or a flash of revenge, was no great matter, for it might be pursued or it might be left according to convenience. But contrariwise when a state, though not actually at war, was yet surrounded (as they now were) by envious foreigners on one side watching opportunities for hostile attack, by rival neighbours on the other watching advantages to encroach upon trade, having at the same time so plentiful a source of troubles both within and without in differences of religion,—the outward face of peace might flatter them into negligence, but their only real security was to be prepared for war. Let them cast their eyes abroad, and consider the state of the continent: when was the future so dark? He thought it would trouble the best watchman in Europe to look a year before him. Surely if England was not as a man going to war, she was at least as a man travelling in the night; and the one needed arms as well as the other. As long as they were in want, what security could they have either against invasion or against wrongs? As long as they were in want, and known to be so, not a treaty could be made with strangers, but basely on their part and gloriously on the other. For he would tell them that a state without provision of treasure had no more freedom of action than a private man that was in debt; the one being not more subject to sheriffs than the other to surprises. Therefore to say that they needed no supply of treasure now because they were now at peace, was to say that a ship might go to sea without ballast, because the water seemed smooth. They might sail well

enough till the wind rose, but the first flaw would upset them.

As for persuading them to consent to that which the safety of the kingdom required, he trusted it was needless. Their affections had been kindled by the King's speech. To move them further would be to stir a fire that burned well already. The King, in offering to part with so many things of his own for the relief of his subjects, had set them an example which it was for them to follow by offering him a supply sufficient to maintain the strength and dignity of the state. And if any man thought that the King was but parting with that which he found it troublesome to keep; as if his prerogative were growing weak with age, and he were willing to give up something in order to strengthen and secure the rest;—he was never more mistaken. For the prerogative (and glad he was, as the procurator and champion thereof, to find it so) was never more sound and vigorous. It was but kept better within its banks, and the banks were thereby made the stronger. His Majesty had made such a track in almost all the points of it, that the footsteps of King James would ever remain. Unlike a bow or a watchspring that became weaker with time, the King's prerogative grew stronger by continuance and was more confirmed and settled now than at first. And if any man, on the other hand, should take alarm at this, as fearing that the balance might go too much on that side,—surely he had no cause for such jealousy; seeing that the graces and benignities of the crown increased with its strength, and that the King was never so liberal in giving away his own for the good of his people, as now when he had both most occasion and most advantage, to keep it for himself; thereby plainly showing that the limit of his beneficence was not in his mind but in his means, and that when his means should abound his grace would superabound.

For the course to be taken, he wished the question of supply to be considered in a committee of the whole house, and to proceed *pari passu* with the Commonwealth Bills. They would thus meet the King's offers in a corresponding

spirit. They were now, as the King had told them, not upon a bargain, but upon an interchange of affection; and they should shape their course accordingly. In a bargain, each party works for himself, and the question is ever which shall have the last word. In an interchange of affection, each cares for the other, and the struggle is which shall make the first offer. The King had got the start with his offers of grace; it was for them to follow the example and meet him with an offer of supply.—And so he concluded for no particular committee, nor sub-committee, but a committee of the whole house.

Such I collect to have been the substance of his argument. Of course I cannot vouch for the accuracy of it, even as conveying the general effect: and in most cases I think time is but wasted in attempting to construct coherent speeches out of a bundle of incoherent notes. But, the occasion being so critical, it is a matter of no small interest in the study both of his character and policy to know what he said; and in this case it happens that the notes are less fragmentary than usual; and the more striking expressions lie in such an order, that (with our collateral lights as to his notion of the style in which the subject ought to be introduced) we may attempt with some confidence to fill up the spaces between. This is the best I can make of it, but you are to take it only as a guess.

A.

How much is your own invention?

B.

Look at the original, and you will say a good deal. But it is like the invention of a sculptor putting together the *disjecta membra* of a broken statue; the problem being to invent an entire figure into which *all* the scattered fragments may be naturally fitted. Invention within such limits cannot go very far wrong.

A.

It makes a very good speech. But there is one part in which you must surely have made a mistake—I mean in the allusion to the growing strength of the prerogative. I should have thought that a dangerous topic, all things considered.

B.

So should I; and if I were bound to believe that James's ideas of prerogative and his methods of maintaining it were as unconstitutional as our popular historians represent them to have been, I should have given up that part of the speech as hopelessly obscure. But the words which remain have the stamp of Bacon so strong upon them that I can hardly doubt that they were taken from his mouth, and they are at the same time so significant as hardly to bear any other meaning. However you may as well have them exactly as they stand, and judge for yourself.

"The King had made such a track in almost all the points of his prerogative, as the footsteps of King James will ever remain.—Joy to him that this done when he the procurator of the King's prerogative. The King's prerogative groweth stronger by continuance; not like a bowstring or a watch; contrary here; for more settled now than at first."

These are the words exactly as they stand in the Commons' Journals. If you can suggest any words, the *insertion* of which between these expressions would give the argument a different and a more natural turn, suggest them. For I find upon comparing similar notes of some other speeches of Bacon's with the speeches as reported by himself, that there is no limit whatever to the *omissions*, but that the words set down are generally correct. For my own part, I cannot by using the utmost license of insertion get rid either of this allusion to the growing strength of the prerogative, or of Bacon's congratulation with himself upon the fact. Now, if we are to believe that the maintenance

of the prerogative was in reality, or in common opinion even, incompatible with the liberty of the people, and especially with the privileges of the Commons, it seems impossible to devise any context in which such a passage could with common discretion have been introduced upon such an occasion as this; the more so, because there was obviously no need to say anything about the prerogative at all. That such a topic should have occurred to Bacon himself indeed is not surprising. He, we know, always thought that the welfare of the kingdom consisted in the due maintenance of the constitution in *both* its branches, and had always taken an equally strenuous part in defence of both. But that in a house more than usually popular in its sympathies and composition, and more than usually jealous of the influence of the Crown; on an occasion too when it was more than commonly important to inspire confidence and affection, and to avoid all irritating topics;—that on such an occasion he should have ventured to say a word about the "prerogative growing stronger by continuance;" still more that he should have alluded to himself in terms of congratulation as the procurator of that prerogative;—what may we infer from that?

A.

We may at least infer that he did not think the name of the prerogative as yet very unpopular.

B.

Indeed I think so. And I think he was in the right, too. For though they had begun to dispute about *points* of prerogative, and were extremely jealous of any novel extension of it, the name was still held in reverence. No notion had as yet entered their heads, at least not consciously, of opposing its just authority or invading its just limits. And this fact is very well worth noticing: because we are taught now-a-days to regard the defence of the prerogative as almost synonymous with opposition to liberty. It is not thought necessary to ask what point of prerogative a man defended,

or in what manner, or upon what principle. We are simply told that he spoke in defence of the King's prerogative, and are left to infer that he was no friend to the people. It cannot have been thought so then. We may perhaps obtain a clearer notion of the relation in which the two powers really stood to each other by looking at a modern example. What is held in greater reverence at this day than the authority of the Judges? If anything, you would say the privileges of the House of Commons. Yet how long is it since they were imprisoning each other's officers? How many months is it since the Serjeant-at-arms was sentenced to pay two hundred pounds damages only for executing the Speaker's warrant, and Sir Thomas Wilde (now Chief Justice himself) was lamenting that the House of Commons should "receive its *death-blow* from the hand of a Russell," only because Lord John had consented to let their privileges be pleaded in justification before the Judges in Westminster Hall? Not that the Judges had any authority to determine what their privileges were; but Sir Thomas Wilde thought there was an end of the House of Commons if they once allowed their privileges to be discussed in the Courts at all. If you were to read the debates on that question and substitute Prerogative for Privilege, you would be surprised to find how nearly it resembles a dispute between James I. and Sir Edward Coke. Yet I doubt whether there be any popular assembly in the country before which a man might not, with full assurance of popular sympathy, congratulate himself upon the flourishing condition of either power,—either upon the integrity of the Bench in maintaining the authority of the Law, or upon the firmness of the House in making good the privileges of the Commons.

A.

I dare say we exaggerate the unpopularity of the prerogative. But still I do not see why Bacon should have introduced the subject. It was at least treading upon dangerous ground.

B.

Not unless you suppose the profession of loyalty to the prerogative to have been *per se* unpopular; which it certainly was not; for there was nothing which the Commons resented so violently in that very session as an imputation of *dis*loyalty to it. Bacon may have had a good reason for touching the topic. You may remember that a principal point in his advice to the King was that in dealing with the parliament he should above all things proceed upon terms of majesty. Now as the question had been opened by Sir Ralph Winwood, who was quite new in his office, had not been in parliament before, and had spent almost all his time as an ambassador in foreign courts, it is possible that this point had not been sufficiently attended to. Bacon may have wished to supply the defect and produce the desired impression. He may have wished also, by pointing at this long list of bills of grace as coincident with a very flourishing condition of the prerogative, to suggest the reflection that to attack the prerogative was not good policy; for that James's liberality was likely to flow more freely when there was no attempt made to squeeze it out of him. And I am the rather induced to suspect this as his motive, because I am persuaded that such was really the fact. For certainly, however things may be represented now, James was by nature and inclination a liberal and popular governor. It was the point of theoretical right upon which he was jealous and bigoted. Rather than admit that he had not a *right* to govern arbitrarily, he would almost have sold his hawks and hounds; he would certainly have dissolved his parliament. But grant him the right, and he was by no means greedy to exercise it. I do really believe that if the Commons had kept him comfortable with subsidies, and without disputing the limits of the prerogative had only kept petitioning for relaxations of it, he would have given them anything they asked.

A.

You said so before. But you agreed to leave that an open

question, and we have not time to settle it now. In supposing however that Bacon wished to convey that impression, I dare say you are right. And while the question is open I must not say that he was wrong.—

Well, and how did the matter end?

B.

It ended for the present (after much distracted debate about Undertakers and misreports) in a resolution to defer the particular consideration of the question till after Easter; with a general understanding however that they were all in favour of a liberal supply. And this last circumstance I want you to remember. It is important for its bearing upon the case of Oliver St. John, for which we shall soon be ready; and the evidence is to my mind conclusive. Two or three members took notice of the fact that there was *not a single voice against supply;* the difference being only as to the time, the manner, and the amount. You may as well take a note of the fact; for I shall probably have to refer to it one of these evenings as established.

A.

On the authority of the Commons' Journals?

B.

Yes, pages 462, 463.—

Well, this all happened on Tuesday the 12th of April; the eighth day after their meeting. The rest of the week seems to have passed peaceably. But on the following Monday more signs of storm appeared in another debate upon the troublesome question of impositions. The notes in the Journals indicate an animated discussion—animated though all on one side—and a general disposition (which was the most stormy symptom of all) to have the question of the right settled before they proceeded with the supply. One member, whose opinion appears to have had great weight, and who had spoken for the King's right in a former parliament,* announced himself a convert upon sight of

* See Hackwill's speech, Com. Journ. p. 467. But if he speaks of

certain precedents which the inquiry had brought out. And it appears that now there was not a single voice on the King's side. Bacon,—whose gift of silence was as great as his gift of speech, and who throughout this session, out of respect probably to the decision of the house upon his own case, having been allowed to remain expressly on account of the public business of which he had the charge, seems to have confined himself to that business and to have spoken very seldom on other subjects,—was on this occasion silent; and the "Bill concerning Taxes and Impositions upon Merchants" was ordered to be committed to the whole house the next day fortnight; being the *Tuesday* after the Easter recess; thus taking precedence of the question of supply, which (as they resolved two days after) was not to be meddled with till *Thursday*.—And so, after some talking about monopolies and elections; the bills of grace having been read once but not further proceeded in; and no other business done; they parted for their fortnight's holiday; with but little chance, I think, of meeting in a better temper,—the seeds of trouble and dissension having been sown much more plentifully and on kinder soil than those of concord and public spirit.

When they met again on the 2nd of May it appeared clearly that the troubles had not at all subsided. Who were the Undertakers? What had they undertaken? How were they to clear themselves of the suspicion? or how was the House to clear itself of them? These were still the questions which agitated all tongues, and which must be laid before any other business could go on; and, as it commonly happens in such cases, all other vague and half-declared suspicions, discontents, and personal quarrels, drew into this channel. A committee had already inquired into the matter and made nothing out. It was now resolved to

himself, as he seems to do, his conversion must have taken place before June, 1610; for his name is mentioned by Sir Dudley Carleton, who was then a member of parliament (see letter to Sir T. Edmonds, 13 July, 1610, *Additional MSS. Br. Mus.* 4176), as one of the speakers *against* the King's right in that month. On the 28th of June, 1610, he seems to have used the very same expression. See Parl. Deb., 1610 (Camden Soc.), p. 79.

enlarge their powers. A committee *of the whole House* was to take it in hand, with power *to examine the Undertakers.* This again was against Bacon's advice; whose speech on the occasion has fortunately been preserved.

A.

By himself?

B.

Yes; it is among those published by Rawley in the "Resuscitatio."—His advice was, first to refer the question to a committee, not of the whole house, but *of a few,* who should consider seriously, temperately, and in order, of the several ways of dealing with it: among the rest, *whether* they should enter into any particular examination of the matter or not. And for his own part, he was inclined to think *not.* His reasons I will give you in his own words, as the shortest account not only of what he feared, but of what did happen.

"As for the last of these" (*i.e.*, some "strict and punctual examination"), "I assure you I am not against it, if I could tell where to begin or where to end. For certainly I have often seen it that things when they are in smother trouble more than when they break out. Smoke blinds the eyes, but when it blazeth forth into flame, it giveth light to the eyes. But then, if you fall to an examination, some person must be charged, some matter must be charged, and the manner of that matter must be charged,—for it may be in a good manner and it may be in a bad in as much difference as between black and white;—and then how far men will ingenuously confess, how far they will politicly deny, and what we can make and gather upon their confession, and how we shall prove against their denial,—it is an endless piece of work, and I doubt we shall grow weary of it."

However so it was to be. The whole House (with its majority of three new members to every two old) was to plunge into the business of examining the Undertakers: and so that sore was likely to be more inflamed than ever. How the matter proceeded, I cannot ascertain, the records in the Journals being imperfect; but it is clear that no good

came of it: for twelve days afterwards we find the heats still raging; aggravated rather than settled or allayed. They had mixed with and irritated almost every debate that took place in the mean time, and had even led to personal quarrels,—nay, to manual scuffles in the committee, —when at last they were appeased by the voluntary confession of Sir Henry Neville; who came forward with a clear and frank explanation of his own share in the Undertaking; which being generally admitted to be quite unexceptionable, the house at length was content to drop all further dispute on that subject and to go on with the business of the country.

But it was now too late. This inflammation had in the mean time spread on all sides, and so infected all the other businesses in which they were engaged, that hardly one of them had now any chance of proceeding harmoniously.

The most formidable stumbling-block was, as I said, the question of Impositions; a stumbling-block not to be avoided, for the question of the *right* could hardly be passed by in silence now without being virtually abandoned. Ever since that brilliant morning's work of Salisbury's, when on the strength of this disputed right he laid new customs upon several hundred articles not taxed before, it had been impossible to let it sleep. Upon this question, (turning as it necessarily did, not upon the point of policy or convenience, but upon the very power of the prerogative) they were to go into Committee, as you may remember, on the Tuesday after the Easter recess; the 3rd of May. The readings of that day are not recorded, but on the 5th the King sent for them to hear what he had to say on the subject; and, as may be gathered from the allusions to his speech in the debate which immediately followed, (and as might indeed have been expected,) he did not at all mend the matter. Indeed so large a majority of the Commons, including almost all, if not all, the free opinions, had now made up their minds on the subject, that no one had ventured in the House to express his dissent. They were not likely therefore to be converted by a speech from the King, which

of course could not be freely answered. They debated the question among themselves the next day, found their unanimity unbroken, and after some dispute as to the manner in which they should proceed, whether by Bill or by Petition, or by a conference with the Lords, concluded finally for the last. The Lords were to be moved to confer, and a Committee was in the mean time appointed to prepare for the conference.

A.

Did not Bacon say anything?

B.

He was one of the Committee; but his name does not appear among the speakers.

A.

How do you account for that? The Procurator of the Prerogative must surely have felt called upon to appear in its defence.

B.

I am not sure that he *now* thought the case for the prerogative good in law. The production of new precedents had partly altered it since he spoke last. Even if he did, still the impolicy of opposing a movement which was now obviously irresistible, would probably be enough to keep him silent. But I am inclined for my own part to suspect that since the last parliament his opinion on the point of law had been, if not changed, at least much shaken. My reason for thinking so I will show you presently. But I must first tell you (that you may see how rapidly things were gathering towards a catastrophe) how this question of Impositions had now so intertangled itself with the question of supply, that it was pretty clear they must stand or fall together. The danger was felt by the undertaking party; who, upon the motion for supply (which immediately

followed), made an effort to keep them clear by committing the house at once, if not to a vote, at least to some definite pledge or declaration of what they meant to do. This (as you may remember) was a measure which Bacon censured afterwards as mischievous, having been prompted by the conscious weakness of the party and having served only to expose it. Accordingly he seems to have taken no part in it himself.

The attempt failed. It was resisted by several of the gravest and most temperate members as unusual and unfit. No one was against a supply when the proper time should come; but the proper time was not yet. It was resolved therefore to defer the consideration of it. They would not even consent to give any formal intimation to the King of their general intention; only it was agreed that "the honourable persons about the chair" might privately inform him that "generally all who had spoken (which were many) had *unâ voce* agreed in their thoughts and speeches to relieve his Majesty."

But though the ground upon which a present vote of supply was resisted by the more temperate members was its contrariety to the ancient custom of parliament, and the dishonour it would be to the King if the vote should not pass with general unanimity,—as it clearly would not, if pushed to the question then;—and though there is no reason to doubt the sincerity of their profession that they would vote liberally when the proper time came;—yet it is clear enough from the tone of that day's debates that whenever that time did come the chance of unanimity would be but small unless in the meanwhile they received some better satisfaction concerning the Impositions. And it is probable that the Undertakers had been reckoning without their host there; expecting the King to give way further than he was really prepared to do. It is certain that he had some time previously been strongly urged to do so; as appears by a memorial addressed to Rochester, I think by Sir Henry Neville.*

* Cott. MSS. Tit. F. iv.

During the next week the Committee appointed to prepare for the conference with the Lords were diligent in their work; the other business going on slowly through obstructions and storms; the chief of which was raised by a complaint of undue interference with the elections, upon which no less a person than the Chancellor of the Duchy of Lancaster was expelled from the House. On Thursday, the 12th of May, the Committee were ready with their report; which was brought up by Sir Edwin Sandys, in a very able and elaborate speech. They had got together all the records; they had thoroughly examined the subject and were more sensible than ever of the magnitude of the grievance; more confident than ever that the King had no legal right to levy impositions without consent of parliament. They conceived that the King had been misinformed, and proposed, as the true way of disabusing him, first to induce the Upper House to join in a petition for removal of the burden; then to present the joint petition to the King, together with a remonstrance of their right; "that so, this eased, they might with better judgment and with alacrity proceed to the question of supply."

This was the end proposed. By way of preparation the subject was formally laid out in nine divisions; and each division, after the excellent practice of those times, was assigned to a separate speaker or speakers. The divisions I suppose you do not wish to be troubled with.

A.

No, I think we may fairly consider that question as obsolete. If the constitutional right had not been settled then, it has been sufficiently settled since. And I am quite willing to take the fact of the dispute and the difference of opinion (especially as the Court of Exchequer had decided it one way, and the Commons another) as a proof that it was then a debateable question; which I suppose is all you want.

B.

Yes, but there is one thing I must trouble you with, for it concerns our subject not a little; which is, that the first of these nine heads, namely the opening of the matter of fact and state of the question, was assigned—to whom, do you think?

A.

I should not have guessed, I confess. But of course you are going to say Bacon.

B.

Yes, to Bacon, the King's Attorney, whose office had but a few weeks before been declared incompatible with the duties of a member of the House, as binding him to the King's side;—to Bacon, who but four years before had been one of the ablest and most strenuous advocates of the King's right;—to Bacon, whom we are now taught to regard as the most servile, the most subtle, the most disingenuous, the most unprincipled instrument of the King's will, and who was really both by office and by principle the constant champion of the King's prerogative;—to this man was entrusted, by a committee of most able and resolute champions of the subject's right, the task of opening and laying the ground-work of an argument which was to make good a conclusion in the teeth of the King's most notorious prejudices. He was to explain to the Lords that the King had in this matter assumed powers which none of his progenitors had assumed, both in time, in number, and in circumstance; that whereas no former King had set any impositions but for a time limited, he had set them for him and his heirs for ever; whereas no former King had set more than two or three, he had set more than as many hundreds; whereas no former King had set them but upon pretence of war or need, he had set them when there was no such pretence.

This I say is a fact which concerns us, because it seems to me absolutely irreconcilable with the popular notion of

Bacon's character. If his character was known anywhere, it must have been known in the House of Commons; this being the twelfth parliament in which he had served, the eleventh in which he had served as a marked and notable man. If his character was mistrusted anywhere or on any occasion, it must have been mistrusted by this parliament, so jealous, turbulent, and popular; and on this occasion, so weighty and so certain to bring the house into collision with the King. Could they have selected him only on account of his powers of persuasion and his inimitable skill in opening a question,—overlooking his untrustworthiness because they could not do without his help? If so, they must have been great fools. Any ordinary fool could have told them that the very same skill which enabled him to guide a cause rightly which he wished to succeed, would have enabled him to guide a cause wrongly which he wished to fail. The thing cannot be explained so. They must either have thought that his heart and opinion were with them, which they could not have done had they thought him a servile tool of the Court; or that they might safely place a reliance on his honesty, such as not many men have deserved, and fewer have been honoured with.

A.

I cannot quarrel with you for making much of the fact. Certainly, considering that a good entrance is half through, and a stumble at the threshold scarcely recoverable, their selection of him is significant. But how was it? You said something just now about his having changed his opinion on the point of law. Had he announced himself a convert?

B.

Not that I can find. And I really cannot make out to my satisfaction what his opinion was on that point. He has nowhere expressed it, so far as I know. His readiness, however, to take the part assigned, whatever his private opinion may have been, is not difficult to account for. Whether or not he thought the King's claim good in law,

he must have been fully satisfied by this time that it could not be maintained in fact. Right or wrong, the question was clearly carried against the King; to have it carried in such a manner that the collision should not be violent or visible, was the best that could be hoped now. You may remember that in his letter of advice to the King he had expressed an opinion that the question of Impositions might be accommodated; and I shall be able to tell you hereafter in what particular way he thought this might be done, so as to involve a virtual abandonment of the King's claim and yet to make it seem his own voluntary act, induced by views of general policy, and having no reference to the question upon which the difference had arisen. Judging from the general tenour of his policy, I have little doubt that he was preparing at this time to work towards some such end. It was precisely one of those struggles between Prerogative and Privilege in which it was of vital importance to avoid a definite and declared victory on either side.

With regard to his opinion on the point of law, I said I had reason to suspect that, if not changed, it was at least shaken since the last parliament. The point is of little importance to our present argument; but it is always interesting to know such a man's views. And if you have patience, I will tell you what my reason is.

A.

By all means. If not to the purpose of the argument, it is all to *my* purpose, which is to know more about him. And it has the interest of perfect novelty.

B.

Well then, I told you that one of the most conspicuous speakers in defence of the King's right when the question was first raised (Mr. Hackwill, I believe) had professed himself a convert upon sight of certain precedents which had been disinterred by the committee appointed to search the records; for when the question first fell under debate, the

records (upon the evidence of which the argument chiefly turned) had been very imperfectly examined. There is nothing extravagant, therefore, in supposing that Bacon might be in the same case; for we happen to know that *shortly after the last parliament* "certain records concerning Impositions" were delivered to him, and that he made private notes upon them. What these records were indeed (further than that their bearing upon the case was thought important)—or what the tenour of his notes was (further than that they were private, and that he wished to keep them so)—I do not know. But it is *possible* that the records in question had the same effect upon his opinion as others had formerly had upon Hackwill's.

Now there is, as you probably know, among Bacon's speeches one entitled "An argument upon the King's right of impositions on merchandises exported or imported." It is tolerably well known. It is printed in the "State Trials," and commented upon in an introductory note by Hargrave. It is referred to by Hallam in his "Constitutional History," who cites it in proof of the badness of the King's cause; observing how weak it is as compared with the arguments on the other side. And I dare say you will find it alluded to in all the modern histories of James's reign. But the odd thing is,—and it is a thing worth noting as showing how very little attention has been paid to Bacon's political writings even by the most diligent of our lawyers and historians,—that not one of them appears to have perceived that it is merely a fragment. Yet a fragment it is upon the very face of it. It may be the first half of the speech; may be more, or may be less; but incomplete it certainly is; as any one might have known not only by the absence of anything like a close or winding-up of the argument (a defect, of which no example can be found among Bacon's finished pieces), but more decisively still by the fact, that in the last page but one he refers to a statute, of which he says he "shall speak more anon;" but of which there is no further mention.*

* A note of the rest of the speech will be found in "Parl. Deb., 1610,"

A.

I thought Bacon had himself made a register of his speeches, and left them to his executors in a state for publication.

B.

So he did: and they were published by Dr. Rawley about thirty years after his death; whether from that register or from the rough copies is uncertain; but *this speech was not among them.* It was first published in the supplement to Stephens's second collection (1734) from an original MS. which is luckily still to be seen in the British Museum. This MS. was found by Locker among Stephens's papers, and (to judge from its form, handwriting, and other outward marks) belonged to a collection of similar ones which appear to have been put together by Bacon when he was Solicitor, under a general title, *orationes, acta, instrumenta.* They are all carefully corrected in his own hand, numbered and titled, as if for the copyist or the printer. They include all the speeches, up to the year 1610, that were afterwards published by Rawley. And this is the only one among them which Rawley did *not* publish. The question naturally occurs, why? And upon an inspection of the MS. the answer occurs as naturally,—because it was left incomplete. True, it is transcribed as fairly and corrected as carefully as the others. But there is no dash at the end, as in the others, to show that it is finished, although it ends in the middle of a page. It has not, as the others, the date added at the beginning; and the number, which had been written at the top, is crossed out. All which omissions concur with the internal evidence to show that it is incomplete.

The next question that occurs is, *why* did he leave it incomplete? a question which can only be answered by guess. Perhaps the rest of the draft had been lost. But

Camden Soc.) g. 66. It was first discovered by Mr. Gardiner, and printed in Notes and Queries, May 19, 1860.

perhaps also, which seems to me as likely, he had changed his opinion on the point of law, (as Hackwill had) upon perusal of those additional records which we know had been shown to him since his speech was delivered. Now if so, (I speak it with an "if") what more natural in the first place than that he should lay it by and leave it out of the collection? What more natural, in the second place, than that he should be entrusted with the opening of the conference on the other side? For there is no doubt that, if willing to undertake that task, he was peculiarly well qualified for it; even more so than if he had always been of the same mind; for his own conversion would give additional weight to his authority, and point him out as especially fitted to set forth the grounds of an argument that was to show that the opposite opinion (which, till he was more fully informed, he had himself held as strongly as any one) was grounded upon imperfect information.

A.

You said he was himself on the committee. Did he apply for that part?

B.

I think not. Sir Edwin Sandys appears to have been the principal manager: and in the completion of the arrangement concerning the several parts (for the distribution I have mentioned was only the recommendation of the Committee), Bacon, after graciously accepting the part which they had laid upon him, as a proof that "their trust in his person discharged their suspicion of his place," proceeded to suggest some doubts as to the matters of fact which it was proposed that he should set forth; wishing that the truth should be well ascertained before they were propounded; which seems to prove that he had not been himself the designer of his own part.

A.

Is there any record of the manner in which he discharged his task?

B.

The conference never took place. A message was sent to the Lords on Saturday the 21st of May—(it had been delayed for four or five days in consequence of new doubts raised in the Commons and new records produced)—praying a conference. This message being taken into consideration by the Lords, was violently opposed, especially by Bishop Neale—("my brother Neale," you know, whose name is embalmed in Bishop Andrewes's celebrated reply)—who passed some strictures on the Lower House which set them all in a flame, and which were the immediate cause of the abrupt dissolution. I will give you a succinct account of this presently from some contemporary letters. But tell me first what you have to say about Bacon's conduct, as above detailed.

A.

Why, as to his change of opinion, I have nothing to say. I do not think your argument conclusive, and I do not think the point of much consequence. The House of Commons being then, as I understand, not divided into regular parties as it is now, but rather a party in itself, I suppose a member might act with regard to the whole house as a government member or an opposition member may do now with regard to his party. I mean that he might sink the smaller differences, and go along with the main body even when they were not going exactly his way. A member of the government must often, I fancy, have to defend in the House a measure which he has opposed in the Cabinet, where the difference is not large enough to justify him in separating from his party. He disapproves, and in the Cabinet advocates a different course; but being outvoted, he thinks it better to go along with them than to break their union or betray their differences. Bacon, upon the same principle, having endeavoured in vain to bring the Committee over to his own views, may have consented to adopt theirs.

But upon the other point,—the inference you draw as to their confidence in his personal honesty from their selection of him to open the question, and the value which you attribute to such testimony,—I think your argument has great force. Indeed I can see only one way out of your dilemma; which is this. Is it possible that he *affected* great forwardness on the popular side, and so won their confidence; meaning however to cross them secretly and bring about that upset by which you say their proceeding was eventually frustrated? Upon that supposition, their selection of him for his part would only prove that he had been artful enough to overreach them; an instance of the "adroitness and pliancy and incomparable ductility" which Mr. Hallam attributes to him.

B.

That, I confess, had not occurred to me. And now that you suggest it, I can answer without the least hesitation that the supposition is quite incredible. It is at variance with all the external and collateral evidence; which imputes the frustration to a set of persons, both in the House and out of it,—in the House as actors, out of the House as instigators,—with whom Bacon had neither sympathy nor influence; with whom in fact he had nothing to do. It is at variance also with everything we know of his wishes, hopes, fears, proceedings, and policy. Such an upset was in his opinion not merely a thing to be avoided, but of all possible issues the very worst that could happen. I am persuaded that no possible motive can be suggested for such a stratagem which would not be utterly inconsistent with everything that he ever said or did from his birth to his death.

But besides all this, though it were possible to believe that he had the art so grossly to overreach the committee at the time, is it possible to believe that he could have so overreached and so betrayed them, without incurring some shadow of suspicion afterwards? The disastrous termination of that parliament was mortifying to many who had seen the whole process. It was interesting to everybody. The

causes of it were canvassed all over the town. But the name of Bacon was never once hinted at, as by any possibility connected with it.—No, you must give up that notion.

A.

With all my heart. It was but a casual suggestion, and I am not in love with it. And as I cannot see any other way to escape your conclusion, I accept it. I admit that the House of Commons in 1614 must have thought Bacon a very different kind of man from what the readers of this review think him in 1847. I admit that they must have been better judges. And I admit that Bacon's conduct throughout the session, if I may trust your exposition of it, was in strict consistency with the principles which he professed both before and after; and that if his views were wise, his conduct was patriotic.—And now tell me about the quarrel between the two Houses.

B.

Yes, but I shall leave the Journals now, which I have been following hitherto; for though we might make out the story pretty accurately from them, it would take some time. I shall cite two unconcerned bystanders as witnesses; observing only that their account of the matter is in all parts consistent with the evidence of the Journals, and is in most parts confirmed by them.

First comes Mr. Lorkin, writing to Sir Thomas Puckering on the 28th of May.—The quarrel began on the 25th.—Having detailed very correctly the preparatory proceedings concerning Impositions, he goes on—

"After they had fitted the business and disposed themselves to a conference, they sent to demand it of the Upper House; where it found some traverses, though chiefly by Neale, Bishop of Lincoln, who offered himself very bitterly against it; alleging that he thought it no way fit to admit of any parley on matters of that nature, which did not strike any more at the branches, but at the root; yea at the very crown and sceptre itself; adding further the second day (for he spake twice) that the Lower House was known to be composed of turbulent and

factious spirits; and if they should give way to a communication or treaty with them, they were like to hear such mutinous speeches, as were not fit for those honourable persons to lend their hearing to; with further amplifications of that kind. Which provoked the House so far, as laying all other business aside, they minded nothing but the reparation of their honour and the vindicating themselves from so foul a blot. And here some difficulty arose about the course they were to use for righting themselves, whether by complaint to the King or to the Upper House; in which deliberation they are now mainly exercised, all being sharply bent against him, and (which is noted) no one man opening his mouth in favour of him."

Meanwhile the King, finding that the summer was advancing faster than his business, sent a message to know "whether they intended an utter cessation." *

"This day" (proceeds Mr. Lorkin) "they are to make their answer, which I understand is like to be in effect this—That they acknowledge in this particular whatsoever his Majesty challengeth: That they never intended any cessation; but held the subject in question to be of that consequence as it was fit for all other business to give way thereto till it was ended."

There is a prosperous business for you!—Now we will call in Mr. John Chamberlain; the best of news-writers; with whose letters I am so familiar that I feel as if he were a personal acquaintance; and I can confidently recommend him as a most accurate, well-informed, and unprejudiced man; not engaged to any party; though evidently sympathising with the popular cause. On the 9th of June, he writes to his friend Sir Dudley Carleton, then ambassador at the Hague; and after stating that on the 3rd of that month the King had written to the House of Commons that unless they fell soundly in hand to relieve his wants, he would dissolve the parliament,—[alas for Bacon's hopes of their "once parting with love and reverence"!]—that upon this the wiser sort had tried to accommodate, but in vain; for that "the House was so malcontent before about the

* They had resolved upon a "cessation" or forbearance to proceed in all other business till they had their answer from the Lords.—Commons' Journals, p. 499.

refusal to confer about Impositions and about the Bishop's speeches, that this last proceeding quite distempered them and made them careless which way the world went;" he proceeds—

"The truth is, it should seem by their carriage and by that I have found from some of them, that there was never known a more disorderly house; and that it was many times more like a cockpit than a grave council, and many sate there that were more fit to have been among the roaring boys than in that assembly."

Upon this, the parliament was dissolved by commission on the 6th of June. Several of the members were afterwards called before the Council; some were sent to the Tower; and those who had parts assigned them in the matter of the Impositions (Bacon excepted, I presume, for his name is not mentioned) were enjoined to bring in their papers to be burned. In another letter, written at the end of the month, Mr. Chamberlain states further—that

"Sir Edwin Sandys so demeaned himself that he was left without taint or touch; though upon examination it fell out that there was a plot discovered to overthrow all orderly proceedings in this parliament and to make it utterly void, by insisting upon dangerous points; as taking away impositions, restoring of silenced ministers, and removing of Scots; with other matters likely to make the King lose all patience. And for this purpose Hoskins was embouched, abetted, and indeed plainly hired with money to do that he did."

For which conspiracy three or four persons not of the House were committed to the Tower.

"Now if it be asked," proceeds Mr. Chamberlain, "why they should take this course and *cui bono;* you must understand that there was much ado and great dispute before this parliament could be procured, and the contrary part, to make good their opinion, sought by all means to embroil it and bring it to nothing."—"The Lord Privy Seal,"—he adds further on, meaning the Earl of Northampton,—"that hath languished a long

time and lain at Greenwich above this month, came home yesterday all along the Town, with more than forty horse; which was much noted for the manner and the time."

If he came as in triumph,—for that is the insinuation,—his death was triumphant; for he died the next week.

And this, I think, is all that need be said about this "Addle Parliament." At our last sitting I gave you Bacon's account of it. This evening I have drawn my description of it entirely from independent and contemporary records, with which he had nothing to do. I hope you recognise the same features in both.

A.

Exactly. The comparison tends to increase one's confidence in his fidelity as a relater.

B.

That confidence you cannot easily raise too high. His accuracy, in all the cases in which I have been able to test it, is perfect, and indeed curious; so much so that I can scarcely explain it except by supposing that the habitual desire to *understand* whatever a man has to deal with, makes accuracy in describing it a kind of necessity. It is more difficult for such a man to report a thing incorrectly, than for most of us to report it correctly.

At our next meeting we shall be ready to take our reviewer in hand again, whose faculty in this respect requires no curious explanation. He has had a respite for five whole evenings, but I hope you do not think they have been wasted. You do not think that all which was material to the understanding of Bacon's character in what I have told you is contained in the paragraph of a page and a half which you last read?

A.

Certainly not. But though he tells us hardly anything of what you have told me, he mentions one thing of which

you have said nothing. You have not said a word about the Digest of the Laws, upon which he says Bacon was engaged. Surely that is too great a thing to be left out of the account of his occupations.

B.

True; but I do not know how far it can be truly said that he *was* at this time occupied with it. I find evidence that he thought it a heroical work. I find him declaring in the House of Commons (March 27, 1608) that "there was no work which the King could undertake in these his times of peace, more politic, more honourable, nor more beneficial to his subjects in all ages." I find him about the same time hinting to the King that it was a work in which he would himself be glad to be employed. I find that before the end of 1616, "upon his motion and by the King's direction, a great deal of good pains had been taken" by himself and others, towards "the reducing of concurrent laws heaped one upon the other to one clear and uniform law." Nay, I find that once (but that was after his fall, eight or nine years later than the time the review speaks of) he had "had *a purpose to undertake*" that "Digest or Recompilement" to which the reviewer alludes, but because it was a work requiring assistance, which assistance was not offered him, he had laid it aside. More than this, I have no evidence to show that during the first twelve years of James's reign he had spent any time in the actual preparation or execution of it. And he does not seem to have advanced in it very far, at any rate.

Why Macaulay chooses to represent him as occupied with it,—as having "his attention not distracted from it," at least,—at this particular period, it is easy to see. He was going to represent him as engaged in "perverting the laws to the vilest purposes of tyranny," and the contrast of the two occupations was too tempting to be forborne. It was but misdating a fact eight or nine years, and history would be dull without a few little liberties of that kind. Besides it *may* have been true after all. I do not deny the

fact; only until I see some evidence for it, I must be excused from asserting it myself.

A.

I do not like those "little liberties," as you call them. Dates are the very landmarks of history; and cursed is he that— Then you have nothing more to say to-night?

B.

Nothing; unless you would like a theme for meditation as you go home.

A.

Well; what do you want me to meditate?

B.

Only to imagine yourself (if this snowy March does not put you out) in the middle of the summer of 1614; knowing nothing of what is to come, except as you may gather it from the past and the present; anxiously meditating upon the state and prospects of the kingdom. Imagine the state so deep in debt (already more than half a million, which is more than a whole year's ordinary revenue, and still rapidly increasing) that it cannot even borrow except at extravagant interest; government security being the worst in the land. Imagine the natural and constitutional remedy by parliament twice tried in vain; each time leaving the case worse than it was before; and for the present at least all hope from that quarter cut off; for though the last failure may have arisen from mismanagement and might perhaps have been avoided, it is not the less past mending now. No possibility therefore of an income tax to correct a deficiency! Then reckon up the other sources of relief which remain available. By straining the prerogative hard, something may no doubt be made of monopolies, penal laws, feudal tenures, fines for disobeying proclamations, raising rents, new impositions, and the like;—but such remedies, though

they may a little relieve the present symptoms, will but hurry on a more fatal disease. Something may possibly be done by a wealthy marriage for the Prince; but not without breeding popular discontents connected with religious superstition; because the only wealthy match must be with the hated and popish Spaniard. Something may be done by selling Crown property; but not without beggaring the inheritance of the Crown. Something also may be done (and it is the least objectionable remedy) by the sale of titular honours; but not without depriving such honours of all their real value. What else?

Had the failure of the parliament been the King's fault alone, he might perhaps have partly recovered his position by recanting his error. But it is too evident that this was not so. It is too evident that the House of Commons cannot now be trusted either for understanding or for acting upon the true interests of the kingdom; even according to the most popular construction of them. The virtuous and consistent and patriotic leaders of the popular cause (such as Sir Edwin Sandys) are no longer masters of the House. It has shown itself capable of becoming a factious assembly, "*careless*" (as Mr. Chamberlain says) "*how the world goes;*" and its movements can no longer be answered for by anybody.

Then again, putting aside the case of the King in his personal capacity, and of the Crown in its relation to the Commons, imagine how the case of the people themselves stands, both at home and abroad, while the Government is in such straits. Spain, no doubt, with the Pope to back her, would gladly invade us. What case so inviting to an invader? Ireland, no doubt, with both Spain and the Pope to help her, would gladly rebel. What better opportunity for rebellion than when the King can raise no money? The Dutch would gladly beat our merchants out of the markets of the world. How are these to be protected against unfair play? The pirates of Algiers and Tunis are plundering them as they pass. How are they to be protected against robbery?

Then look at home. Things are quiet there, it is true: no great evil pressing; no great danger threatening. Yet Time is at his old work; souring what was sweet, making easy what was difficult, and difficult what was easy; bringing in continually new cases which the Government wants new powers to meet; yet new powers cannot be had without a Parliament; proclamations being but a voice, which cannot be enforced except where a previous law gives sanction. Whatever good therefore was designed for the nation in that long array of Bills prepared by Government for the last Parliament, or in any others which the popular party designed to bring in,—all that good is at a stand.

Imagine all this as you walk home through the snow, and then ask yourself—still remembering that it is June 1614,— *what is to be done next?* You will then be better able to understand Bacon's position and enter into his views; for though you might understand the history of England during James's reign very well without knowing anything about Bacon, you cannot at all understand the life of Bacon without knowing a good deal about the history of England. But you must consider the question, not as a moral thesis, but as a practical problem; always remembering that none of the functions of Government can be discharged without paying money; and that, however base a thing the gathering of money may be, still you cannot possibly pay it unless you first have it; and, since it will not come of itself, you cannot have it without asking for it.

A.

That I can quite understand. And I will ask myself the question you propose; not without thanking the stars (if there are any out) that myself is not bound to find an answer.

EVENING THE TWELFTH.

B.

Well, what said the stars ?

A.

There were none out. And I confess that my meditation led to nothing but a sense of the magnitude of the difficulty. What was to be done next, I really cannot tell. To call another parliament *immediately* would have been as likely to make matters worse as better. At any rate it was an experiment which the King could not have been expected to hazard; at least without some new case arising, such as a war. A popular war might have dome something for him: but it would not come of itself, and to attempt to get one up was a thing not to be recommended by an honest man. And certainly while the Exchequer was known to be empty with no chance of replenishment, not only must the King have been in difficulties, but the whole nation in danger. I admit the extremity of the embarrassment.

B.

What do you think of an appeal from the representatives of the people to the people themselves ?

A.

By calling a new parliament ? It might have been very well to try, had the trial involved no risk beyond simple

failure. But the two last experiments of the kind seem to have been not simply failures, but positively mischievous. They left matters worse than they found them. Such a course would have been in itself, no doubt, constitutional. But it might have led to results very unconstitutional. It might have broken up the constitution.

B.

It would not have been easy perhaps to take effectual security against some such issue. But it was not a new parliament that I was thinking of. There was another mode of appeal to the people, which was open. Their representatives had bungled their business; had stranded everything; obtained nothing. The only point in which they may be said to have prevailed was one in which they had not intended to prevail: which was the refusal, or rather the omission, of supplies. It does not appear that even the most violent and thoughtless of them had originally intended to part without voting a supply. It is certain that the body of the house intended all along to vote liberally. They only meant to use their constitutional power of refusal as a lever to bring the King round to their other ends; but overrating its strength, they strained it till it broke. And it cannot be said that this was not their own fault. It was their immoderate, unjustifiable, and reckless violence that caused the breakage. You have seen in what light the proceedings which led to the abrupt dissolution were regarded by a sensible and disengaged man like Mr. Chamberlain, whose leaning was decidedly towards the popular side. Some time before, in speaking of the "great patience" which the King showed with the Lower House, he had expressed a hope that "they would not stand too stiff, but take some moderate course to supply him by ordinary means, lest he should be driven to ways of worse consequence, wherein he would not want colour both from law and pulpit;"—and when he found that they grew worse and worse, that the house was no better than a cockpit, and that their proceedings were brought to confusion by a set of hireling agitators,

he must have been much disgusted not only with them but with the issue which among them they had brought out. And it can hardly be doubted that great numbers of decent Englishmen shared that feeling, regretted the issue, and would have been glad to join in any course for remedying it.

Now there was one remedy, partial indeed, but effectual so far as it went, which every man could apply for himself. As many as regretted that parliament had parted without taxing the people for the benefit of the King, might offer the King *their own share of such a tax,* of their own free will. Their money being their own, they might bestow it in that way if they liked, I suppose?

A.

Of course they might, *if they liked.*

B.

And any man who thought it right to do so himself, might think it right for others, similarly circumstanced, to do so too?

A.

No doubt.

B.

And what he thought it right for them to do, he might endeavour to persuade them to do?

A.

Yes.

B.

And if such a contribution were offered, thus freely, to the King, the King might lawfully accept it,—might he not?—The law which forbade him to *exact* a contribution without consent of parliament, did not forbid him to *receive* one which (with or without that consent) was freely offered?

A.

I do not see how it should. Certainly, if it did, it must have been in virtue of some very express clause to that effect; which I never heard of.

B.

Then if a party of noblemen and gentlemen, knowing what had passed, weighing the consequences of it, and concluding (as they might well do) that such a notorious beggary of the Exchequer, together with such a notorious breach between the Executive and the Legislature, was dangerous to the best interests of the kingdom; that it had been brought about by no just or rational course of proceeding, but by accidents and blunders and faction; and that it was such a conclusion as every wise and honest man in the kingdom must, if he understood the nature and consequences of it, regret;—I say if such a party agreed, first to make a subscription among themselves, and then to get up a subscription throughout the country, for the relief of the Exchequer, and for a better proof that the King, however he might have broken with the parliament, had not lost the affections of the people;—was there any harm in it?

A.

Not in a *subscription*, got up by the people among themselves.

B.

How "among themselves"? Do you mean, without the King's knowledge? That would have been impossible. Such a subscription might have been begun without the King's knowledge, but could not have gone on long. Nor indeed would it have been right that it should. As soon as it became a public proceeding, the King's reputation must have been too much interested in it to allow of his being left in ignorance.

A.

True, but that was not what I meant. I know that such a thing could not, or should not, have been done without the King's knowledge and sanction; nor even without the use of his name; for that was an essential part of the motive. But the question is in what manner the King's *authority* should be used. It might be so used as to give people an idea that the proposed contribution was not altogether voluntary; for that though they would not be compelled to pay, they might nevertheless be brought into trouble by refusing. In that case, I should not call it a subscription got up by the people among themselves.

B.

But if all practicable precautions were taken to avoid giving that impression; to make people understand that it was really and truly a free gift; that any man might give or not give, as he pleased; and that while those who gave would be thanked, those who did not give would pass unnoticed and unchallenged;—what should you say then?

A.

I should say that the sum-total was not likely to be large enough to pay the cost of collection.

B.

The proceeding impolitic then, but not wrong or unconstitutional?

A.

No, I see nothing unconstitutional in it, any more than in a charity-sermon.

B.

Then I think we shall agree. And we may return to our narrative again.

Let us first hear Mr. Lorkin, who writes to Sir Thomas

Puckering on the 18th of June; only twelve days after the dissolution. Having explained the occasions of the breach, he goes on—

"The Convocation, on the other side, yielded the King some better contentment; who finding that great assembly scattered without yielding any relief to his Majesty's wants, whereunto they were chiefly called, offered voluntary contribution to the King; which was that every bishop and dean should present him with the best piece of plate he had, and all other inferior ministers should be quoted ratably, according to their means, by their diocesan bishop;—whose example the Lords have since followed, with divers other of his Majesty's particular servants."

Here you see the first motion and origin of a voluntary contribution, in the resolution of certain individual members of the laity to follow the example of the clergy; for the offer then made by the members of the *Convocation* (with whom the legal power of taxing the clergy lay) may be considered only as an irregular mode of doing what they had a right to do, and would no doubt have done in the regular way, if they had had the opportunity.* Of the next step, which brings us to the case in question, we hear from Mr. Chamberlain (for I keep as much as possible to witnesses who cannot be suspected of any interest in misrepresenting the facts), who writes to Sir Dudley Carleton twelve days later (30th June). After describing the origin and beginning of the contribution in the same manner as Mr. Lorkin (only that he says nothing about any taxation of the inferior clergy, and speaks merely of the Bishops as

* "The desire of us all is that your Lordship will bear a part in this work, and that you will move the clergy in your diocese to send in such a voluntary gratification, *whereunto those which were here in Convocation were already prepared;* out of this ground, that if the parliament had obtained the expected success, they might well have conceived that they should have granted no less than three or four subsidies. Our meaning in this is that no poor man should be grated on, but that it should come freely from the purses of those who are of ability," &c.—*Letter from the Archbishop of Canterbury to the Bishop of London, June*, 1614: *printed in Goodman's* "*Court of King James*," vol. ii. p. 157. Mr. Lorkin seems to have been mistaken in saying that the inferior ministers were to be "*quoted ratably according to their means.*"

having, by agreement among themselves, offered each his best piece of plate, &c.), and adding the particular sums which several persons had contributed (with which we need not trouble ourselves, unless it be worth while to mention that Sir Edward Coke is set down for 200*l.*), he proceeds to say that "*letters are to be sent into the several shires, to see how they will follow the example.*"

So far, you will admit that there is nothing unconstitutional.

A.

Stay. That must depend upon the effect of those letters. I have no fault to find with the bishops, and lords, and judges, and courtiers, for giving what they pleased. I like them the better for it. But there may have been much that was unconstitutional in the methods they took to induce the shires to follow their example.

B.

True. And with that view it may be desirable to examine those letters. I have a copy of one of them,* which I presume is a copy of all. This question however is not material to our present argument. Our business at present is not with the Council, but with Bacon; for what was done by the Council let Sir Edward Coke answer, who was now Privy Councillor. Concerning the part for which Bacon was answerable, I can give you some particular and original information.

You say, and I quite agree, that the question how far the proceeding was constitutional depends entirely upon the methods taken to induce the people to follow the example of the bishops and lords. When therefore I chanced one day upon a paper in the handwriting of a secretary whom Bacon commonly employed about this time, docketed in Bacon's own hand, and entitled, "*Certain points to be observed in the voluntary oblation well begun for his*

* Additional MSS. (Brit. Mus.) 2442, fo. 246.

Majesty's help and supply," I thought I had made a great catch. The points to be observed are many and minute. But considering the gravity of the offence with which Bacon stands charged—namely that of "perverting the laws to the vilest purposes of tyranny;"—and the importance of this paper as evidence of the matter of fact in this instance, I suppose you will like to hear the whole of it.

A.

The whole, by all means. To judge by the title, it must have been drawn up at the beginning of the business.

B.

Yes, at the very critical time of all:—between the first motion (with which it does not appear that he had anything to do) and the sending out of those letters, of the contents of which you seem to be so suspicious. But you shall see. I will read you the whole straight through.

"In general there are three things, which are *tanquam fines*, unto which relation is to be had in the ordering of this matter.

"1st. That it have no show of any compulsory means to draw men to give, or any pressing of it by authority.

"2nd. That the meaner or poorer sort of people be not at all touched or dealt with.

"3rd. That such course be taken as may encourage and give the better sort an edge and appetite to give cheerfully and plentifully.

"For that which may conduce to these ends, the points following are to be put in practice.

"1. That the terms of Benevolence and Contribution (whereof the one is forbidden by Act of Parliament, the other is the ordinary word for payments taxed and rated in the country) be avoided; and that the terms whereby it shall be expressed shall be *Gift*, *Present*, *Offering*, *Oblation*, or the like.

"2. That there be no precise method of beginning with the greater or superior and so descending in order to the meaner and inferior; or that men should give in the body or company whereof they are; but that every particular man's gift (if he like better to go by himself) may be accepted and presented by what means himself best liketh.

"3. That there be no letters from his Majesty nor the body of the Council, nor the lieutenants, concerning the same. But that particular councillors, noblemen, great officers, and the like, by their several letters or word of mouth, do commend it to some selected gentlemen in the country which are most industrious and gracious with the shires or towns; or to such as have dependence upon them as officers.

"4. That there be no formal course of appointing either the collector,—as that he must be either the deputy-lieutenant, or custos rotulorum, or clerk of the peace (or the like); nor yet of the presenter to the King. But that it be left to the choice of the justices of peace for the shire, and the principal tradesmen in towns, whom to choose to be their collector, and likewise by whom about the King to present their gift.

"5. That it be given out abroad that Mr. Secretary and Sir Thomas Lake, being daily attending about the King, have order to receive the bills or schedules of names of such as do give, and the sum or value of their gift, and to show the same bills or schedules to the King weekly; and the like bill to the Prince to be preferred by some near about him.

"6. That there be copies spread abroad, especially of such as give most bountifully, that others of their rank may perceive they cannot without discredit and note fall too low.

"7. That no fees or payments be taken out of that which shall be presented, nor that it be paid into the Exchequer, but be consigned over to the payment of the King's debts; and those debts first that concern the public, as the navy, Ireland, &c. And that, above all, care be taken that no part of the plate or otherwise be given away.

"8. That if much should come in in plate, which will be a great gain either to the Jewel-house or to the goldsmith, consideration be had thereof, and good proportion answered to the King out of the same by the officers of the Jewel-house or goldsmiths.

"9. That the city of London by no means use not the course which commonly they take, to make any rating by Companies, whereby it may reach to the poor, but that they choose the ablest men of every Company with whom to deal.

"10. That the like course be held by them that shall deal for the King in all counties and towns, singling out those that either for ability or credit will be forward, and importuning or pressing no man.

"11. That for the present time there be no mention at all

made of the voluntary delivering in of Privy Seals, nor that that course be allowed or accepted of (as not helping his Majesty's present necessity), for otherwise many will turn their gift into that kind.

"12. That it be now at the first hotly and closely followed, and not suffered to cool, for else it will be *acribus initiis fine incurioso.*

"13. That especial care be taken that in the accepting of a gift from any recusant beyond proportion, it be not conceived there is some secret dispensation or toleration.

"14. That howsoever no manner of compulsory means is to be used, nor no show thereof; yet if any malicious person shall deride or scorn or slander the frank disposition of the King's subjects, or purposely dissuade it, or seek to defeat it or divert it, that he be questioned and severely punished.

"15. That in the conclusion there be a Proclamation of thanks; as well to comfort the King's loving subjects, as to publish and sound abroad their affection unto all parts."

There! what do you say to that? for I think Bacon must in justice be held personally answerable for every article in that advice.

A.

I hope you are not taking advantage of my ignorance and simplicity to impose compositions of your own upon me as Bacon's. If these unprinted pieces, of which you have become lately so prolific, are of your own invention, I can only say that you are a better mimic than I took you for. And really I begin to have my suspicions; for if a man should set about forging evidence for the express purpose of contradicting the popular idea of Bacon's character, I do not know what better he could produce. If they are really his—

B.

Make yourself easy about that; I am in profound earnest, I assure you. What I have read is a copy of the manuscript, the whole manuscript, and nothing but the manuscript. See the Cotton Collection Cleopatra, F. vi.

folio 391. How it came there I do not know; but there it is. Sir Robert Cotton knew the value of such things and carefully collected and preserved them. Of course I cannot *prove* that the paper was Bacon's own composition. It may have been a copy of an official paper. But it has, in my judgment, all the marks of his own hand.

A.

Then as to Bacon's conduct so far, it cannot but be thought absolutely decisive. If he had drawn it up for the express purpose of excluding the possibility of a charge that he had been engaged in an unconstitutional proceeding, he could not have done it better.

Was his advice followed? Were the fifteen points all attended to?

B.

That I cannot answer for. In one point indeed it would seem that the Council had intended to take another course; for you see he here expressly recommends that there be no letters sent from the King or the body of the Council, but only from particular persons. Now among the "innovations" which Sir Edward Coke was charged with two years after, one was an opinion which he had given "that the King *by his great seal* could not so much as *move any of his subjects for benevolence.*" And in this it is said that he had "*prevailed;*" and that the announcement of the opinion had "marred the benevolence." It must therefore have been designed in the first instance to make the collection by commission under the great seal; which was directly against Bacon's advice. It is true that Bacon differed with Coke upon the point of law; and as Coke himself publicly retracted the opinion in his place in the Star Chamber nine months after, we may conclude that it was erroneous; one of the many instances of Coke's careless precipitance. But you see if Bacon's advice had been attended to, there would have been no dispute even about that,—no room even for that erroneous objection. As it was, the letters were sent

from the body of the Council, which was still against Bacon's advice. In other respects, the cautions suggested by him in the foregoing paper were, so far as I know, observed; for although the term "*Benevolence*" was the name given to the contribution in common speech, it was not used in the letters from the Council.

And now at last we are ready, I think, for the case of Oliver St. John. Much ado, you will think, about a small matter. But you will find on examination that the case cannot be truly understood without taking all these things into consideration, and that none of them were present to Macaulay's mind when he pronounced his judgment. I think indeed it was ignorance. But it was ignorance caused by incuriosity, and therefore not excusable. He had no right to be ignorant of the leading facts; and could not indeed have missed them, had he been really desirous to understand the question. Moreover though the matter seems small, (for it is but a sentence, and can scarcely be said to contain any direct charge against Bacon,) yet, as the reviewer has placed it, it is calculated to make a strong and important impression to his disadvantage. I do not know whether the rhetoricians have any name for it, but it is one of their choicest and most dishonest artifices, to preface a serious charge which they are going to aggravate, with one or two lighter ones which they affect to be unwilling to press on account of the greater matter which is coming; whereby they evade the necessity of substantiating the lighter charges; and yet make that very circumstance tell upon the reader as an evidence, not of the weakness of their case (which it really is), but of the strength and abundance of it. Lightly as these charges are allowed to pass, the incautious reader takes them not only for good in themselves, but for an indication of many more of the kind lying beyond, which might be cited, but which are left unnoticed for the very same reason for which these are left unproved; viz. because they are so many and so much alike.—You and I will not be taken in so. I insist upon the absolute and

explicit rejection of every insinuation, however lightly pressed, which cannot be substantially made out; and that instead of being allowed to stand to the disadvantage of the defendant, it shall be transferred to the other side of the account and be charged as so much discredit to the insinuator.

A.

Of course an unjust charge will in some degree damage the case into which it is admitted, because it must be supposed that it would not have been admitted had a just one been forthcoming. But I wish you would come to particulars; for I do not quite perceive the application of these general observations.

B.

Listen then.

"Unfortunately (proceeds the reviewer) he was at this very time employed in perverting those laws to the vilest purposes of tyranny. When Oliver St. John was brought before the Star Chamber for maintaining that the King had no right to levy benevolences, and was for his manly and constitutional conduct sentenced to imprisonment during the royal pleasure, and to a fine of 5000*l.*, Bacon appeared as counsel for the prosecution."

This is all; and you will say it is very temperately stated. And yet I suppose it stirs you with a kind of indignation. That a man for only maintaining what everybody knows to be true,—for nothing more than a manly assertion of sound constitutional doctrine,—should be called into the odious Star Chamber, seems on the very face of it arbitrary and tyrannical. That he should moreover, for no greater offence than this manly and patriotic sentiment, be imprisoned and heavily fined, is surely intolerable. That Bacon should be a principal actor in such a proceeding, cannot but be deplored as a most unworthy condescension, which goes far to justify the imputation under which he labours, as a servile and unscrupulous tool of tyranny, ready

for any service of that sort! This is the kind of impression which the statement naturally leaves on the mind of a modern reader. If the passage were declaimed before any public assembly in the land, you feel that there would be a general murmur of "shame!"—But you and I are alone, with time at our disposal and books about us, and we are not bound to hurry on to the next sentence faster than we like. Therefore before we let our virtuous indignation loose, suppose we separate the charge into distinct propositions, and inquire how many of them are true. What, in the first place, are the facts of the case as you gather them from this statement?

A.

First. That the offence imputed to Oliver St. John was nothing more than a denial (a denial *in thesi* it would seem) of the King's right to levy benevolences.

Second. That this denial involved no assertion that was not sound and constitutional.

Third. That there was no impropriety in the manner or occasion (for if there were it should have been mentioned).

Fourth. That for this, and for nothing more than this, he was prosecuted by Bacon in the Star Chamber, fined, and imprisoned.—All which does, I confess, seem very bad.

B.

I knew it would. And in some respects not without reason. And yet for how much of it after all, even taking this as a just description, has *Bacon* to answer? Only for "appearing as counsel for the prosecution." That is all he is even charged with.—Now in any ordinary proceeding before any ordinary court of justice, the charge of appearing as counsel for the prosecution (even when the case for the prosecution is not a good one) is not usually considered fatal to the character of an Attorney-General; unless it appear either that he advised the prosecution originally or that he conducted it unfairly.

May we then assume that in this case the Attorney-

General *originated* the prosecution? By no means. The resolution to prosecute on such occasions was taken by the Council. The Attorney, as holding a general retainer for the Crown, was directed by the Council to prepare the information.

Is a lawyer then expected to decline the management of a case until he has satisfied himself of the merits of it? So far from being expected, I understand that by the rules of the profession he is not even allowed to do so; the decision upon the merits being considered, and rightly considered, as more appropriately belonging to the *Judges* after they have heard them argued. Sir Edward Coke has been much blamed for his conduct as public prosecutor; but never, I think, for the simple fact of "appearing as counsel for the prosecution;" always for some unfairness or brutality in his manner of conducting it.

When Bacon therefore is charged with being "employed in perverting the laws to the vilest purposes of tyranny," and we find that in the first instance quoted by way of illustration, it is not even insinuated that he did anything more than "appear as counsel for the prosecution;" it is not even hinted that his argument turned upon any false construction of the law, involved any unconstitutional proposition, or was conducted with any unseemly violence;—one is tempted to ask upon what pretence (even if we take the merits of the case at the reviewer's own estimate) it can be cited as an attempt *upon Bacon's part* to pervert the laws; or how even the most confiding and sympathetic reader, who knows only what the writer tells him and cannot pause to reflect upon that, can entertain as a serious imputation this the only personal and particular act which is laid to his charge? Yet you say it seems to you "all very bad." And I dare say there is hardly one of the readers of this review who has not felt as he read a movement of indignation against Bacon, which predisposes him to put the worst construction upon whatever may come next. How should this be?

Now I believe that it is chiefly the name of the *Star*

Chamber, which being associated in our minds with tyranny, violence, and unconstitutional oppression, gives point and weight to a charge so light and pointless in itself. It is worth while therefore to stop for a moment and ask what kind of tribunal this Star Chamber really was; and whether we have any right thus to regard it as being at that time such a mere tool of tyranny that a Crown lawyer could not take his ordinary part in its proceedings without disgrace; at any rate whether it *was* so regarded by the better kind of men in those days, or by Bacon himself in his untempted and deliberate opinion. It is commonly admitted by those who think the worst of him, that however he might be ready to take any disgraceful part which promised to advance his fortunes, still it was always against his better nature and judgment; that he knew all the time how wrong it was, and in what light it would be regarded by just men then and by posterity afterwards. It may be assumed therefore that, how far soever from the right he might be seduced by the temptation of the hour, he would take care not needlessly to connect such errors with his permanent name; that he would at least keep his sycophancies and subserviencies out of those books which were to "gain on men's minds in ages" and to "last as long as books last." Now he has on two very conspicuous occasions gone conspicuously out of his way to record his opinion of the Star Chamber as a political institution. How far that opinion was sound,—how far the good which such an institution might do as an instrument of justice outweighed the ill it might do as an instrument of oppression,—we will not stay to discuss. But what his opinion *was*, it is important to know. We are all of us aware that the ordinary courts of justice have been *used* for purposes as unjust and tyrannical as ever the Star Chamber was; nay worse; for they could kill; whereas the Star Chamber could only fine and imprison. Yet no man thinks it his duty on that account to refuse his part in a proceeding before a court of justice. If Bacon then had as good an opinion of the Star Chamber as we have of Westminster Hall, upon what pretence can we blame him for merely not refusing his part?

Now in his History of Henry VII., where he certainly lay under no obligation except that of a faithful historian to express any opinion at all on the matter, he has taken occasion to speak of the Star Chamber:—

"This court (he says) is one of the sagest and noblest institutions of this kingdom; for in the distribution of the courts of ordinary justice (besides the High Court of Parliament)—in which distribution the King's Bench holdeth the pleas of the Crown, the Common Pleas the pleas civil, the Exchequer pleas concerning the King's revenue, and the Chancery the prætorian power for mitigating the rigour of the law in case of extremity by the conscience of a good man,—there was nevertheless always reserved a high and pre-eminent power to the King's Council, in causes which might in example or by consequence concern the state of the commonwealth; which if they were criminal the Council used to sit in the chamber called the Star Chamber, if civil in the white chamber called Whitehall. And as the Chancery had the prætorian power for equity, so the Star Chamber had the censorian power for offences under the degree of capital. This court of Star Chamber is compounded of good elements, for it consisteth of four kinds of persons,—Councillors, Peers, Prelates, and Chief Judges. It discerneth principally of four kinds of causes,—forces, frauds, crimes various of stellionate, and the inchoations or middle acts towards crimes capital or heinous, not actually committed or perpetrated."

Such is his description of the Star Chamber, written in 1621, after his fall, in a historical work which was meant to last. You see therefore that (however the name may have acquired a bad odour since) it was not an institution in which Bacon saw anything infamous. But the other occasion on which he touches the subject is still more unsuspected and gratuitous. It is in the eighth book of the *De Augmentis*, where he gives a specimen of a treatise on "Universal Justice for the Fountains of Law;" his object being to give a general character of administrative justice according to the true idea of it, drawn not from the institutions of any particular state, but from the universal laws of human society; by which, as by a pattern, particular king-

doms and commonwealths might prove and amend their own laws. One of the principal features in this model is the institution of prætorian and censorian courts to supply the deficiencies of the laws; that is, to deal with cases for which the laws have failed to provide. I suppose no man will contend that in this he was merely making an occasion to flatter the King. He is undoubtedly giving his own idea of what the institutions for justice in a state ought to be. Now compare his ideal description of the constitution and functions of the *Censorian Court* with those of the Star Chamber as it was in his time, and you will suspect that it sat for the picture.

"Let the Censorian Courts (he says) have power and jurisdiction, not only to punish new offences, but also to increase the punishment prescribed by law for old offences, where the cases are heinous or enormous; provided only they be not capital. For what is enormous is, as it were, new.

* * * * * * *

"Let them however confine themselves entirely to cases enormous and extraordinary, and not encroach upon the ordinary jurisdictions, lest the thing tend rather to supplant the law than to supply it.

"Let those powers reside in the Supreme Courts only. Let them not be communicated to the inferior; for the power to supply, extend, or moderate laws, comes very near to the power of making laws.

"But let not these Courts be committed to a single person; but consist of several. And let their decrees not go forth in silence; but let the Judges state their reasons, and that openly before the bystanders; so that the authority, which in respect of power is free, may yet be circumscribed in respect of fame and opinion.

"Let them not have authority to shed blood*; nor let any capital sentence be pronounced by any Court whatever except according to a law known and certain. God himself denounced death before he inflicted it: and no man ought to be deprived of his life, who did not know beforehand that he was sinning against his life.

"In Censorian Courts let there be a third vote allowed;

* "*Rubricæ sanguinis ne sunto.*"

that is, that the judges be not obliged either to acquit or condemn, but may likewise declare the fact not proven. And let there be power to inflict not a penalty only, but also a note or mark; such, I mean, as shall not extend to actual punishment, but may end either in admonition only, or in a light disgrace,—punishing the offender as it were with a blush."

I could quote other passages from Bacon's letters and speeches which show the importance he attached to the functions of the Star Chamber; but they might be objected to as spoken in deference to the time. In these which I have cited he had no personal object to serve. They must be taken as expressing his deliberate opinion, which he wished to stand on record and to go down to future ages as his.

A.

I can easily believe that such a court was valuable *in its true use,* as any other arbitrary power would be. You do not mean to say that in practice it was not liable to great abuses?

B.

Liable to abuse it must always have been in bad times, as all offices of power and trust are, when they get into bad hands. And when, a few years afterwards, the people fell out with the government, of course they fell out with the Star Chamber which was the instrument of the government. When the government is unpopular, that is, when the people look upon the government as their enemy, the whole social frame is disordered and every natural function becomes a symptom of disease. But when the state is in a healthy condition, which can never be but when those who hold offices of trust are trusted, I cannot but think that a court so constituted and invested with such authority would be a most valuable instrument of good government, and not at all likely to abuse its powers. Translate it into our own times, and think how it would act, and how it would be regarded. That will enable you to understand how it *was* regarded then.

But first take the picture of it, as it was; drawn by quite another hand. Sir Edward Coke, in the 4th book of his Institutes,—which was written you know in his old age and in the period of his high patriotism and popularity,—"*Hæc ego grandævus posui tibi, candide lector,*)—has described the Star Chamber minutely. From two independent portraits, one drawn by Bacon when his civil career was over and "all knowledge" was his only province, the other by Coke when he was no longer a servant of the Crown but a leader of the popular cause in the House of Commons, we may expect to obtain a tolerably accurate notion of the thing, according to the character which it then bore. And first for the *jurisdiction* of the court:—

"Seeing the proceeding according to the laws and customs of this realm (says Coke) cannot by one rule of law suffice to punish in every case the exorbitancy and enormity of some great and horrible crimes and offences, and especially of great men, this court dealeth with them; to the end that the medicine may be according to the disease and the punishment according to the offence; *ut pœna ad paucos, metus ad omnes perveniat;* without respect of persons, be they public or private, great or small: as for oppression and other exorbitant offences of great men (whom inferior judges and jurors, though they should not, yet would in respect of their greatness be afraid to offend), bribery, extortion, maintenance, champerty, imbracery, forgery, perjury, dispersers of false and dangerous rumours, news, and scandalous libelling, false and partial misdemeanors of sheriffs and bailiffs of liberties, frauds, deceits, great and horrible riots, routs and unlawful assemblies, single combats, challenges, duels, and other heinous and extraordinary offences and misdemeanors;—but ordinary and such offences as may be sufficiently and condignly punished by the proceeding of the Common Laws, this court leaveth to the ordinary courts of justice and dealeth not with them; *ne dignitas hujus Curiæ vilesceret,* as aforesaid."

There you have Coke's account of the proper jurisdiction of the Star Chamber. We will see presently whether the offence of Oliver St. John came properly within it. Now for the method of proceeding:—

"The proceeding in this court is by bill or information, by examination of the defendant upon interrogatories, and by examination of witnesses; and rarely *ore tenus*, upon the confession of the party in writing under his hand, which again he must freely confess in open court; upon which confession in open court, the court doth proceed. But if his confession be set down too short, or otherwise than he meant, he may deny it; and then they cannot proceed against him but by bill or information, which is the fairest way.

"The informations, bills, answers, replications, &c., are in English, and engrossed in parchment, and filled up. All the writs and processes of the court are under the Great Seal; the sentences, decrees, and acts of the court are engrossed in a fair book, with the names of the Lords and others of the King's Council and Justices that were present and gave their voice."

There you have the order of proceeding. And now lastly for the general character and constitution of the court:—

"It is the most honourable court (our parliament excepted) that is in the Christian world, both in respect of the judges of the court, and of their honourable proceeding according to their just jurisdiction and the ancient and just orders of the court. For the judges of the same are (as you have heard) the grandees of the realm, the Lord Chancellor, the Lord Treasurer, the Lord President of the King's Council, the Lord Privy Seal, all the Lords spiritual, temporal, and others of the King's most honourable Privy Council, and the principal Judges of the realm, and such other Lords of parliament as the King shall name. And they judge upon confession or deposition of witnesses; and the court cannot sit for the hearing of causes under the number of eight at the least. And it is truly said, *Curia camerœ stellatœ, si vetustatem spectemus, est antiquissima; si dignitatem, honoratissima.* This court, the right institution and ancient orders thereof being observed, doth keep all England quiet."

Such was the general character and constitution of the Star Chamber, according to Sir Edward Coke.

Now only remember who the men are that at this moment represent the offices above enumerated, and would now therefore constitute the court; imagine the causes

heard with open doors according to the rules above specified, and each of those judges,—severally, in order, beginning with the lowest (which was the practice)—to give his sentence with his reasons; would any one regard it as an iniquitous tribunal, before which an Attorney-General could not "appear as counsel for the prosecution" without compromising his character? And what a court so ordered and constituted would appear to us now, such no doubt the actual Star Chamber did appear to Bacon and Coke then. If Bacon had been unwilling to conduct this prosecution, he must have refused, and given a reason for refusing. What reason could he have given?

A.

He might have reported to the Council that he had examined the case and found it a bad one.

B.

To which the Council would have replied that to determine *that* was neither for him nor for them, but for the court. Whether the case were fit to go before the court, it was *their* business, not his, to decide. They had themselves heard the allegations and decided that it was. It was his business only to prepare the information.

Mind I do not say that Bacon did feel any repugnance to take his part. It is not impossible (though I have no reason to think so) that he was the original suggester of the prosecution. That the case was in the first instance referred to him for his report, and that he reported in favour of the prosecution, is not at all improbable. Whether there would have been any harm in that, we will see presently. But I wanted you in the first place to understand how loose and inconclusive the statement is, upon the very face of it, which caused that little overflow of virtuous indignation. Where there is a direct misstatement, you have some excuse for being misled: but here you have none. You have not been told, and you do not know, that Bacon took any part in this business, more than any barrister is ready to take on

either side of any cause for which he is retained. Yet your feelings are so affected by two or three loose epithets, that you are content to take it as a proof that he was therein "perverting the laws to the purposes of tyranny;" and to feel indignant and incorruptible. Are you aware how *wrong* it is, to take such impressions and indulge such emotions so idly?

A.

Are *you* aware how much you would have exulted if you could have proved positively that Bacon had nothing to do with it?

B.

I might perhaps have enjoyed it as a fresh instance of the curious infelicity of the reviewer's care. But to show you how little I should have valued such an accident for its bearing upon the exculpation of Bacon, I will give up the advantage which (from the want of evidence the other way) I may fairly claim. You cannot show that Bacon is answerable for anything more than the not refusing to take his official part in the proceeding against Oliver St. John. I might stand upon that. But I will allow you to hold him responsible for the proceeding itself. For though I have no reason to think that his opinion was asked, yet neither have I any doubt that if it *had* been asked, it would have been in favour of the prosecution. And I hope you will give me credit for some candour in this concession; for I am quite aware that it makes my position much less secure.

Hitherto I have scarcely had occasion to plead in behalf of Bacon allowance for the errors of his age. But now I must ask you to remember that in his time the suppression of writings and speeches dangerous to the commonwealth was considered as much the duty of government, as the suppression of manual violations of the peace is now; and moreover that the danger to be apprehended from writings and speeches was at that time universally believed to be much greater than we can now easily imagine. The spring

of 1615 in which Oliver St. John was prosecuted lay about half way between two memorable events. It was but five years before, that the House of Commons was so incensed against a doctor of laws * for nothing more than a definition in a dictionary, that (according to a contemporary letter-writer) they would "almost have hanged him." It was but six years after, that another House of Commons ("universally allowed," according to this very reviewer, "to have been one of the best Houses that ever sat") did actually pass the following sentence upon an old gentleman, who had been a barrister and a justice of the peace. He was first to stand for two hours in the pillory at Westminster, with a paper round his hat setting forth the crime for which he stood there; then to ride on a horse without a saddle, his face towards the tail and the tail in his hand, from Westminster to the Exchange; there stand in the pillory for two hours more, and then ride back in the same manner to the Fleet prison for the night. The next day he was to ride in the same fashion to Cheapside, and, having again stood two hours in the pillory there, was in the same fashion to ride back again. He was moreover to be fined 1000*l.* All this was unanimously resolved in a full House, amidst acclamations and execrations;—the most temperate speakers not attempting to do more than dissuade them from adding to his punishment the small items of whipping, branding, and boring the tongue, and having some difficulty in accomplishing that. And all for what? For having, in the Fleet prison, before some bystanders, and in a contemptuous manner, called the King and Queen of Bohemia "goodman and goodwife Palsgrave." All this judgment you may see in the Journals solemnly recorded. And it would have been executed forthwith, but for a timely discovery that the whole proceeding was illegal; the House of Commons not being a court of justice; (which discovery, by the way, was not made by Sir Edward Coke;) and the case being claimed by the House of Lords as belonging to them. To the House of Lords it was accordingly handed over with much

* Dr. Cowell.

courtesy; before whom the Attorney-General (Coventry) formally charged him with notorious misdemeanours and high presumption in four points:—he had "rejoiced at the losses happened to the King's daughter and her children;" he had "discouraged others who were of good affection unto them;" he had "spoken basely of them;" he had "taken upon himself to judge of the rights of kingdoms." His words and looks were deposed to by witnesses; he did not distinctly deny them: his offence was at once voted worthy of their lordships' censure: and the Lord Chief Justice pronounced the following sentence:—

"1. That he shall be incapable of bearing arms like a gentleman; he shall ever be held an infamous person; and his testimony not to be taken in any court or cause.

"2. That on Monday next in the morning he shall be brought to Westminster Hall, and there to be set on horseback with his face to the horse's tail, holding the tail in his hand, with papers on his head and breast declaring his offence, and so to ride to the pillory in Cheapside, and there to stand two hours in the pillory, and then to be branded with the letter K in his forehead.

"3. To be whipped at a cart's tail, on the first day of the next term, from the Fleet to Westminster Hall, with papers on his head declaring his offence, and there to stand in the pillory for two hours.

"4. That he shall be fined to the King in 5000*l.*

"5. That he shall be imprisoned in Newgate during his life."

This was the sentence of the Lords spiritual and temporal. And it is said to have been all executed, except the whipping, which a few days after was suspended at the intercession of the prince, and the imprisonment, from which the King released him. So that there is one thing to be said for the House of Commons,—that the House of Lords was worse.

Of course I do not quote this last proceeding as a *sample* of the time. It must have been monstrous even then. But before you can imagine such a case *possible* (especially in "one of the best Houses that ever sat"), you must imagine yourself in a world where freedom of speech was something

quite different from anything we now know of; different not merely in the opinions and apprehensions with which it was regarded, but in the effects which it could work. When *words* could produce such an effect upon the representative assembly and the highest court of judicature of a great people, though you may say they were but wind, you must admit that it was such a wind as might make the sea dangerous.—The case of Dr. Cowell and his Dictionary was, I fancy, a fair sample of the time: no one who had committed the same offence would have had a chance of escaping with a lighter punishment. His offence was an unconstitutional *opinion;* his punishment the suppression of the book which contained it, by the King's authority, at the instance of the party aggrieved, viz. the House of Commons: which certainly was an interference with freedom of speech as clear as any the Star Chamber was ever guilty of; and would probably have been as gross a one, if it had rested with the Commons to pronounce the sentence and select the punishment.—You see therefore that, while one writer inveighs against the people for their violence and another against the King for his tyranny, the simple fact is that the right of free speech was not recognised in those days by either side; not tolerated in practice; not maintained in principle. And had Bacon, or any one else, determined to act consistently according to our modern maxims on that subject, he must at the same time have determined to throw up whatever part he had in public affairs. He must first have stood up against the Commons, in defence of Dr. Cowell's right to define the power of the King and the Parliament in what terms he thought best; and then against the King, in defence of John Owen's right to say that "the King, being excommunicated, might be lawfully deposed and killed." For the first he would have been turned out of the House of Commons with execrations; for the other he would have been struck off the list of Learned Counsel. A splendid fate, for a man who was adjusting his life to the convenience of the declaimers of a future generation; but unsatisfactory for one who was ambitious of doing some good in his own.

A.

If this is all you want me to remember, I can accommodate you. I should as soon think of blaming the first navigator of the British Channel for not sailing as boldly as our merchants now do, with their charts, buoys, and lighthouses, as of censuring a statesman of the seventeenth century because he did not govern as liberally as if he had had all the lights of the nineteenth.

B.

That admission would be enough probably for my present purpose. But while we are about it, do not you think we may go a step further, and admit that as in those days, when freedom of speech was unknown, all men greatly overrated the *danger*,—so we, living in the middle of all licence, are apt to underrate the *evils*, of it? I do not mean that the evils of restraint might not be greater; but that the evils of liberty are great; and so great, that if a man had foreseen them, and could have kept the door shut against them, he might reasonably have hesitated to fling it open. I know this is rather hard. But consider it thus. Suppose a man in 1614 (for we may suppose impossible cases) seeing so deeply into the nature of society, as to form a *true* estimate of the consequences which would follow from declaring tongues and pens absolutely free; an unexaggerated estimate; knowing where the mischief would *end* as well as where it would begin. Suppose such a man, so forewarned, to hold in his hand a seed or germ, of which Cobbett's Register, the Rotunda, the Times, the Political Unions, and all the organized social agitations of our day, would be, not the accidental effects, but the legitimate and permanent fruit. Suppose him to believe that he had this seed in his power. "If I leave this seed to itself, it will spread into such a harvest; if I nip it, it will perish." Are you quite sure that it would not have been his duty to nip it? Is it certain that such freedom of speech as we have now, is the only form of freedom under which its benefits

can be enjoyed; for are its evils so few that we need not wish for any modification? It is true that we live in the midst of all these things, confident, unmoved, secure. But is it not also true that government is growing every year more paralytic? Is it not true that there are many measures which *any* good government would agree in wishing to carry, yet which no government that is now possible *can* carry? Take the glaring instance of the day. Do you believe that there are ten decent men in the kingdom who, if the government of the country were entrusted to them, would not agree that the people ought to be taught to read? Yet are there ten men in the kingdom so wise, so persuasive, so respected, that they can get leave to take the measures necessary for that object? Is not this result chiefly owing to the unlimited license of agitation which the land enjoys? And is it a result which any man can regard with satisfaction?

A.

I confess it has sometimes occurred to me that we underrate the mischiefs of this popular licence, from not knowing how much good it *prevents.*

B.

And that is as much as I ask you to admit. Whether the good or the evil preponderates, is too large a question to enter on; and as we should certainly agree that any attempt to suppress it *now* would be mischievous, so we should probably agree that an attempt to suppress it even then, when it *might* have been suppressed, would upon the whole have done more harm than good. All I say is, that a man looking forward to the present condition of government in England as a possible result of removing all restraint from pens and tongues, might well have shrunk from the responsibility of advising that it should be done.

But we have been supposing an impossible case. With such experience as men then had, no man *could* have seen so far beyond the immediate into the remote issue. For

there is yet another consideration which we are apt to overlook. The diseases of society are like epidemic physical diseases; most virulent when they first break out. The first visitation of the cholera a few years ago killed people like a plague. It has remained among us since, but in a form so much milder that we scarcely hear of it. Judging of the terror of it by what we see about us now, we should think the consternation into which England was thrown only sixteen or seventeen years ago, on its first arrival, utterly ridiculous. In like manner, if we judge of the evil effects of licence of speech by what we see about us now, the apprehensions formerly entertained by men in authority may well seem extravagant. But remember what has happened between. Remember that before we settled into our present state the nation had to pass through two revolutions. One king's head had to be cut off; another's (a supreme governor's at least) had to be dug up and gibbeted. And to those who lived thirty years before the civil war, the first stages of the process were much easier to foresee than the last.

A.

You do not attribute the civil war to licence of speech?

B.

Only as I attribute the explosion to the spark. The explosive material must be there. I do believe, however, that licence of speech, when it first breaks out, is not only a symptom of social disturbance, but a cause. And it is never more necessary to tread out the spark than when the danger is nearest. Bacon, at any rate, did unquestionably look upon these things as the beginnings of civil troubles. They were the new manners or fashions which warned him of civil wars. *Bella civilia quæ mihi videntur propter mores quosdam non ita pridem introductos multas regiones peragratura.* And the question with him must have been, not as to the *policy* of suppressing them if it could be done, but as to the *possibility* of suppressing them effectually without

driving the humour inwards; which could only be when the offence was one, in the punishment of which popular sympathy, or at least popular acquiescence, might be counted on.—Let us now see whether Oliver St. John's offence was of that kind.

His offence, you say, was the denial of the King's right to levy benevolences. And certainly the reviewer's words fully justify you in drawing that conclusion. But he must have been thinking more about his effects than his facts, or he would have felt that he was thereby misrepresenting the case in its principal feature. The simple denial of the King's right was neither the alleged nor the real ground of the charge. The opinion which St. John had maintained went much further, and was in fact false and contrary to law. But that was not the point. It was not for maintaining the false opinion that he was prosecuted, but for maintaining it *in such a manner* as to raise scandal and discontent and opposition to the government; not without risk of stirring sedition. His offence was, in fact, a *seditious libel*, of unusually grave character and (as it was thought) of unusually dangerous consequence.

A.

What was the occasion of it?

B.

Well asked. The occasion was that which we have been so long talking about—the measures taken to promote the voluntary contribution. The motive of that contribution was, you admit, urgent: the object legitimate and good: the means unobjectionable. Letters were sent from the Council to the sheriffs and justices of the peace in the several counties, stating what had been done in London, and wishing that the country might be moved to follow the example. The tenour of these letters was publicly explained by Bacon in the Star Chamber, at a time when every one of them was ready to be produced in contradiction if he described it falsely; and I have a copy of one of them by

me which fully bears out his statement. Now Bacon distinctly asserts that these letters were so drawn up as to avoid all show of compulsion, and to leave every man really free; that they contained no special direction for the management of the business, such as any man could be called to account upon; but that they trusted it entirely to the industry and good will of those in the country;—that there was "no proportion or rate set down, not so much as by way of a wish;" "no menace of any that should deny; no reproof of any that did deny; no certifying of the names of any that had denied;" that for simply denying "no man was apprehended, *no, nor noted;*" that therefore it was a true and pure *benevolence,* "wherein every man had a prince's prerogative, a negative voice; and the word, *excuse moi,* was a plea peremptory."

"If indeed men could not content themselves to deny, but that they must censure and inveigh, nor to excuse themselves, but they must accuse the state,"—you have already heard by anticipation what Bacon's opinion was of their case. For among the "points to be observed," one was that "if any malicious person should deride or scorn or slander the frank disposition of the King's subjects, or purposely dissuade it, or seek to defeat it or divert it, he should be questioned and severely punished."

You took no exception to this when I read it; do you wish to take any now, when you see the more particular bearing of it?

A.

Indeed I hardly know. Any opposition of that kind would have been much to be regretted and disapproved, because it would certainly have tended to obstruct what I admit was an important public object. Having admitted that the proceeding was not only legitimate in itself, but the only resource I could suggest for enabling the Government to perform its legitimate functions; and objectionable only because it was likely to prove so inadequate to the emergency; which objection must have been greatly aggra-

vated by such obstruction;—having admitted all this, I cannot decently decline to admit further that the opposition was to be regretted and disapproved, and if possible prevented. If therefore there were any legal way to check such obstructions, I suppose I should have been for taking it.

B.

Very well, I am content with that.—Now let us see whether this "manly and constitutional conduct" of Oliver St. John fell short of that measure or went beyond it. He was a gentleman, living in the neighbourhood of Marlborough; and it would seem of some consequence there. For the mayor of that town (having received directions from the sheriffs and justices of Devonshire to call a meeting concerning the business of the benevolence) consulted him on the subject beforehand; "dealt with him to know his mind," is Bacon's expression. He declined to give any answer in private; but would take time to consider. The result of his consideration was a letter, which the next day, when the justices were to meet, he sent to the mayor, with authority to impart it to them if he thought fit. By good luck this letter has been preserved, and may be read in the "Cabala," p. 361, ed. 1663, whereby we have another opportunity of judging for ourselves whether Macaulay or Bacon be the more trustworthy reporter of a fact.

He begins: "As I think, this kind of benevolence is against law, reason, and religion," and thereupon proceeds to prove these three propositions in formal succession.

With the law-logic by which he endeavours to establish the first, we need not much trouble ourselves. It consists merely of an enumeration of the several statutes which forbid arbitrary taxation; beginning with the famous clause in Magna Charta, "that no freeman be anyway *destroyed* (*ullo modo destruatur*) but by the laws of the land," and ending with the statute of Richard III., which exempts the subjects and commons of the realm from all charges, or impositions, or exactions, under the name of a Benevolence: —an argument which, if good for anything, would be good

to prove that a Queen's letter in aid of a church collection is illegal. But I suppose you will admit that there was nothing either manly or constitutional in that.

A.

I think indeed, if the King or Bacon had used such an argument, the reviewer would have fitted it with another epithet.

B.

So much for the proceeding being against *Law.* Then comes the proof that it was against *Reason;* which is not quite so bad, though still poor enough. He contends first, that as the commons (meaning the common people) in their several and particular capacity neither know what the King's wants are nor the sums which may be thus raised to supply them, it is against reason that they should be made relievers or suppliers of them (as if I should say that because I do not know how far a public subscription will go to relieve the distress of Ireland, therefore it is against reason that I should be asked to subscribe what I can afford towards it. Every man might know that whatever he gave would help; and the more the more). Secondly, he contends that, the wisdom of the land assembled in parliament having in their judgment and discretion *denied* any such aid, it was against reason that the particular and several commons, distracted, should oppose their own judgment and discretion to that of the assembled wisdom:—in which argument I admit that, *had the fact been so,* there might have been some force. If the House of Commons had, of purpose and as a measure of precaution for the liberty of the subject, deliberately intended to leave the state in an inextricable embarrassment, it might have been fairly argued that every man who contributed his mite to relieve it was contributing to defeat their purposes. And moreover since the contribution would not in that case have been altogether the private concern of the contributor, a man might really have thought it his duty not only to

refuse for himself but to dissuade others; just as I may reasonably endeavour to dissuade a man from indulging in private charity when it encourages a public nuisance. But in the case in question, the ground was clearly false. No such inference could possibly be drawn from the circumstances.

A.

I do not know. They had been asked and had not given, and that with an evident purpose to force concessions by withholding.

B.

Yes, with a purpose to force concessions *if they could;* but not with an intention of persisting in the refusal of supplies in case they could *not* obtain the concessions. The final omission of supplies could not be taken as the result of a deliberate intention on the part of the House. It was the result of the tumult and distraction and sudden break-up.

A.

Yes, that is true. And it must be confessed that the House had not entitled itself to have much deference paid even to its most deliberate purposes. I have no sympathy with Mr. St. John so far.

B.

Even this, you see, is something more than "maintaining that the King had no right to levy benevolences." It is maintaining also that the people had no right to offer them: surely a gross invasion of popular liberty! So that we have left the reviewer out of sight already. But we have not yet come to the offence for which Oliver St. John was brought before the Star Chamber.

Thus much to prove that the proceeding was against *Reason.* Now for *Religion.*

Having satisfied himself by the arguments above-

mentioned that the whole proceeding was against the laws, and remembering that the King had at his coronation sworn to maintain the laws, he goes on to draw the inference and make the application. And here it is that, having been only foolish, vexatious, and obstructive before, he becomes (even in my modern eyes that see nothing to reverence in kings) decidedly contemptuous and libellous; for he takes upon himself flatly to declare the King guilty of perjury,—the highest offence against God; he reminds the justices that for such errors as these Richard II. lost his crown; and that every subject who should lend his help would be accessory to the King's sin, and in danger of excommunication.—Certainly if he had said half as much against the House of Commons, he would soon have found himself riding face backwards to the pillory and lodging in Little Ease.

But in such a case everything depends upon the turn of expression, and therefore you must have it in his own words, though they are rather prolix.

"What prosperity (he says) can be expected to befall either our King or nation, when the King shall, haply out of ignorance or (as I hope) out of forgetfulness and unheediness commit so great a sin against his God, as is the violating of his great and solemn oath taken at his coronation for the maintaining of the laws, liberties, and customs of this noble realm; and his subjects,—some for fear, some in pride, some to please others,—shall join hands to forward so unhappy an achievement? Can he any way more highly offend the Divine majesty whom he then invocated? As also can he give unto another Henry IV. (if such an one should arise, which God forbid) a greater advantage? Let those articles put up against Richard II. be looked on; it will appear that the breach of the laws, infringing the liberties, and failing in this his oath, were the main blemishes wherewith he could distain and spot the honour of that good and gentle prince, who indeed was rather by others abused than of himself mischievously any way disposed."

So much for the King. And certainly if any attempt was to be made for the preservation of reasonable decorum and the common forms of respect in the demeanour of the subject

to the sovereign, and if there was any court in the land legally authorized to take notice of gross breaches of the same, I do not see how such a case as this could be properly passed over. A few years since, when Queen Victoria was enjoying a party-popularity, if any conspicuous Conservative gentleman had used such expressions of *her*, some loyal Whig would have thought it his duty to call him out for it. And the Star Chamber with all its faults was a better tribunal than Chalk Farm.

Well, the King, then, was in danger of the wrath of God, and of deposition by his subjects. The subjects who were aiding and abetting appear to have been in a still worse condition.

"As very irreligiously and uncharitably we help forward the King's majesty in that grievous sin of perjury, so into what a hellish danger we plunge ourselves, *even as many of us as contribute*, is to be learned out of the several sentences of excommunication given out against such givers."—

And then (that there may be no mistake) he proceeds to quote at length the curse denounced by the Archbishop of Canterbury in Edward the First's time—by which all resisters and breakers of the ordinances granted by our Lord the King (against benevolences, &c., had and taken without common assent) were by the said Archbishop "excommunicated and accursed, and from the body of our Lord Jesus Christ, and from all the company of heaven, and from all the sacraments of the holy Church, sequestered and excluded." And so, "leaving others to their own consciences whereby in that last and dreadful day they should stand or fall before Him who would reward every man according to his deeds," he commends the mayor to the grace of the Almighty, and remains his loving neighbour and friend Oliver St. John.

This was the manly and constitutional conduct.—You look as if you could not make up your mind. Surely you cannot doubt that if there was to be a censorian court at all, such a production as this was a fit subject for its censure.

A.

I was thinking that you are a little too severe on St. John, from not making due allowance for the political fanaticism of the times. The true history of the parliamentary proceedings may not have been known to him. He may have thought that he was doing a solemn duty, and defending a breach in the constitution. I admit however that the matter was unjustifiable, and the thing not to be tolerated, and the case well deserving of the censure of the court, as those times were. If you forget the condition of the times and judge it by a modern standard, you would say that it was foolish to notice such a production at all; being too contemptible, too grossly sophistical and fanatical to mislead anybody. But I suppose there were many lawyers as sophistical and many puritans as fanatical in those days; and therefore it might have found audiences by whom it would not have been merely laughed at.

B.

Merely laughed at! In those days! Why, have we not here in our own day a very distinguished man,—certainly no puritan and (they say) not much of a lawyer,—who is so far from "merely laughing at it" that he thinks it "manly and constitutional"?

A.

Yes; but are you sure he ever read it? Perhaps he only knew that Oliver St. John was fined in the Star Chamber for opposing the benevolence. He wanted two epithets to balance his sentence; and benevolences being unconstitutional and opposition manly, why should he hesitate? However, I admit, as I said, that, as the times stood, it was an example to be checked if possible. Therefore I shall no longer quarrel with Bacon even if he advised the prosecution.

B.

And that is the very most of his responsibility. For

with the decision of the court—the fine of 5000*l.* and the imprisonment during the King's pleasure—he had nothing whatever to do. Sir Edward Coke himself led the way with the sentence; "delivering the law for the benevolence strongly," according to Bacon.

A.

But Bacon urged the case against St. John. In what spirit did he perform that part?

B.

Yes, there again! Whether the reviewer had read Bacon's speech, I do not know. One would hope not. What he would have said of it if he had, it is impossible to guess. The same judgment which called St. John's letter "manly and constitutional" might (no doubt) as easily have called Bacon's speech *un*manly and *un*constitutional; and I have little doubt that he would actually have done so, if it would have trimmed his period better. All I can say is, that there the speech remains for all men to read;—a very model, of what such a speech should be; aiming rather to show the groundlessness of the insinuations contained in the libel and so to counteract its impression, than to inveigh against the motives of the writer and so make him odious. He speaks as if he felt that the offence being once pointed out and brought home, the prisoner himself must have been so ashamed of it, that it was indelicate to aggravate it further. And this, by the way, I believe to have been not only a genuine and natural feeling in Bacon, but a fact as regarded St. John himself. For he afterwards made a very large and earnest confession; not merely a formal submission, such as was commonly required as a condition of release from punishment, which I count as nothing; but an ample and particular confession, acknowledging the justice of the charge and sentence in all its points (particularly in that concerning the *intentions* of the Parliament, which is the most important) and rather aggravating his own offence.

A.

Printed?

B.

I think not. I saw it myself in manuscript in the British Museum; and read it through with a strong impression that it was sincere. But I forget the number of the volume in which I found it.*

A.

No matter: I have not the slightest curiosity to see it. The second thoughts of such men are generally as worthless as the first; the recantation as erroneous as the error recanted. When the truth is not in a man, it will not come out of him either way.

B.

Then upon this charge you acquit Bacon entirely?

A.

Yes; with honour. I confess that I was led astray by those two profligate adjectives; and that the charge when examined is merely ridiculous; damaging nobody but the inventor.

B.

It fails, then, not only as a proof that Bacon was himself "perverting the laws to the purposes of tyranny," but even as an instance of his being engaged as a subordinate functionary in any such business. As a subordinate functionary he might have taken part in such a business without blame, just as a soldier may without blame fight in a bad cause, or as a judge may without blame pronounce sentence upon an unjust verdict. It is not for the soldier to decide whether there shall be peace or war; it is not for the judge to decide upon the fact; it is not for the Attorney-

* Printed in "Letters and Life of Bacon," vol. v. p. 147.

General to usurp the functions of the Council of State. But here there was no injustice in the case. The proceeding from beginning to end was perfectly legal and constitutional. There was no dispute as to the facts, no question as to the jurisdiction of the court, no doubt as to the state of the law.

A.

Yes, I admit all that.

B.

Thus far then,—and we are now in April 1615, Bacon being fifty-four years and three months old,—you have literally found no fault with him. He has not only done nothing wrong himself, but has been endeavouring (as far as a modest man might) to keep his betters from doing wrong.

A.

So far as you have thought fit to tell me.

B.

True; but, as I told you before, I cannot help that. You have heard all that the reviewer had to say up to this time. What I have volunteered to add has been only what seemed to me important. But I have told the story truly; and, if truly told, is it not of itself enough? Some questions might possibly be raised as to the means used or recommended in one or two cases. What were the fittest means by which to attain ends in the court of James I., Bacon probably knew better than either of us. But look at the ends themselves, which he has been trying to bring about. In what respect are they inconsistent with the largest ideas of constitutional liberty which were then entertained by any rational man who was content to live under a monarchy?

A.

I cannot deny that the aim of his policy was constitutional.

B.

We will rest here then for the present. But it is important that at this period of the story all this should be explicitly understood and acknowledged. That a working state-lawyer, in difficult and disordered times, should get through all his work without being engaged in some transactions which, if not positively condemnable, were at least questionable, is more than can well be hoped of any man; especially when those transactions are judged by rules of morality belonging to a state of society quite different, and a period of time 200 years in advance. There is no distinguished public man of our own day who has not been deeply censured by one party or the other for some passage or other of his public life. Most of them have in their time been abused by both. But concerning the men of our day we judge like rational creatures. In conjecturing their motives and judging their actions we take their general character and past performances into account. We do not lightly believe that a man who has all his life been a consistent Whig and has never shown himself an unscrupulous grasper at place, will suddenly turn round and vote against his party and his principles for the mere chance of putting a Tory minister in a minority. He may be accused of doing so, and perhaps with some colour and plausibility. But reasonable men reject the imputation as inconsistent with the tenour of his life; and even with unreasonable men who believe it for a time, the impression does not last.

Let Bacon then in cases of doubtful aspect (which cannot but be expected to present themselves) be judged according to the same rule. I do not want to justify him where he is wrong; but I say that fifty-four years of unremitting, undeviating, unbought, unrewarded patriotism are enough, not indeed to *excuse* a change of character in the fifty-fifth, but to make me look well at the evidence before I admit the fact. I say that such a change is *à priori* unlikely; and if the facts can be explained in two different ways, one of which compels you to suppose the man suddenly sunk into

a miserable tool of tyranny, while the other allows you to believe that he is still what he has always been, an honest subject and servant of the state, desiring above all things that Order may be the nurse of Liberty,—I say that the latter explanation is the more probable.

A.

The more *charitable*, at least.

B.

Nay, but is it not the more *probable?* A charitable construction for any part of Bacon's conduct is not to be expected. His critics spend all their charity in saying how sorry they are to condemn him. They have none left to judge him with. Besides it is not charity we want, but truth. The duty of charity as regarded Bacon, expired 221 years ago.* Since Easter-day 1626 *he* has had no interest in what men might say of him or think of him. But he left behind him the memory of a long and active life and the record of many thoughts, in which *we* have still some interest; and from which we shall derive good or harm according to the use we make of them; good, if we understand them right; harm, if we understand them wrongly. It is solely our own concern. Let us therefore by all means endeavour to understand his life as it really was; not to make it out such as charity would wish it to have been. Let us by all means judge it as *severely* as possible. Only do not let us confound a severe judgment with a harsh sentence or a sweeping condemnation; but let us believe that which upon the closest and strictest scrutiny of the evidence appears most *probable*. And I say again that that interpretation is, *cæteris paribus*, the most probable, which does not presuppose a radical change in the character after fifty-four.

A.

Cæteris paribus is a large condition. But we shall see.

* This was written in April, 1847.

EVENING THE THIRTEENTH.

B.

We now come to the Peacham case.

A.

Of which I am very curious to hear your explanation. I think you will find it a puzzler.

B.

I am not surprised to hear you say so. It has brought more odium upon Bacon during the last ten years than all his other actions put together, excepting only his conduct to Essex. And though I do not myself think that there is any just ground for this odium, yet I confess that the case is more difficult to deal with than any we have yet had; and that for two reasons.

In the first place, it presents him as more or less concerned in three practices, all usual then, but long since obsolete; practices, moreover, concerning which our feelings are peculiarly sensitive, and our sensibility (inasmuch as the disuse of them is to be traced to tendencies of opinion unquestionably virtuous) is to be approved and fostered; concerning which therefore it is not easy, nor perhaps desirable, to bring ourselves into perfect sympathy with those who lived when they were still ordinary, and not as yet odious; I mean the practice of prosecuting men for con-

structive treason; of taking Judges' opinions out of court; and of torture.

In the second place, since the notion of founding upon this case a charge against *Bacon* is entirely modern, we are called on to judge him without hearing his defence.

A.

Nay, we have the story chiefly from his own letters, have we not?

B.

Yes; but not from letters written in vindication of himself. He was only reporting the state of the business from time to time to persons who were acquainted with all the particulars of his own conduct and never dreamed of finding fault with it. You cannot therefore expect them to contain his *case,* because his case was not in question *Some* particulars of his conduct come out in them, and these may be justly regarded as admitted. What he says he had done he *had* done. But he may have done many other things, of which, either because they were not to the purpose or because they were already known to those he was addressing, he says nothing; yet these might have been very important to his own justification had any charge been made against him.

A.

When was it then that his conduct in the matter was first called in question?

B.

For his dealing with the Judges I rather think he was first censured by Sir Michael Foster in a work published after Sir Michael's death, which happened in 1763; for the torturing, in the year 1837 in this review. I will show you presently that both these writers misstate the case in some material points. But as our reviewer has been so

long silent, we will first hear him out without interruption. I would only remind you by way of preparation that Bacon was but Attorney-General;—that the King was chief magistrate;—that the Council of State, not the Learned Counsel, were the King's *advisers*;—that even these were not responsible advisers in the sense in which the principal officers of the Crown now are; but rather as an under-secretary of state is responsible to his chief,—his duty being to advise what he thinks best, but to do what he is bid;—that it is the duty of subordinate officers to execute the commands of their official superiors according to the laws as they are, or are understood, at the time being—and lastly, that we are all in the habit of looking on, if not with positive apathy, at least with a resigned acquiescence, upon any severities which are now thought necessary for the preservation of society, but which as soon as they shall have been relaxed and it shall be found that society goes on equally well without them, will seem to everybody abominable.

Think of the powers now ordinarily exercised in the army and navy. If it should ever be found that due discipline can be kept up without them, (which is now most doubted by those who have best means of judging,) what will the next generation think of our Judge Advocates who sanction them, our Secretaries at War and Lords of the Admiralty who defend them, our Parliaments which do not abolish them,—even of you or me who read the accounts of them over our breakfast and do not immediately commence an agitation?

A.

They can only condemn us in the lump. The blame will lie upon so many that no large share can fall upon any individual.

B.

I beg your pardon; that is only on the supposition that we are all the same height. If there be one among us much taller than the rest, he will have to bear it all. If among

all the multitude who are directly or indirectly implicated in such severities, there be one great enough and good enough to survive his generation and live into another century, the scandal of them will settle upon his name. Whether he will be pitied or hated for it will depend upon accident. We all know now that the Duke of Wellington is a humane man as well as a great soldier. As a great soldier he will be celebrated for ever; but what his reputation for humanity may be a hundred years hence, it is not easy to predict. He has given strong evidence in favour of practices which are likely enough to be abolished, and which as soon as they become obsolete will inevitably be looked back upon with disgust. A skilful reviewer will be able to make it tell well as a black spot on his brightness.—But we keep Macaulay waiting too long.

A.

"About the same time he was deeply engaged in a still more disgraceful transaction."—

B.

Stay. You must omit the "*still more.*" For you have acquitted him of all disgraceful transactions hitherto.

A.

Yes.

"About the same time he was deeply engaged in a [very] disgraceful transaction. An aged clergyman of the name of Peacham was accused of treason on account of some passages of a sermon which was found in his study. The sermon, whether written by him or not, had never been preached. It did not appear that he had any intention of preaching it. The most servile lawyers of those servile times were forced to admit that there were great difficulties both as to the facts and as to the law. Bacon was employed to remove those difficulties. He was employed to settle the question of law by tampering with the judges, and the question of fact by torturing the prisoner. Three judges of the Court of King's Bench were tractable. But Coke was made of different stuff. Pedant, bigot, and savage

as he was, he had qualities which bore a strong, though a very disagreeable, likeness to some of the highest virtues which a public man can possess. He was an exception to a maxim which we believe to be generally true—that those who trample on the helpless are disposed to cringe to the powerful. He behaved with gross rudeness to his juniors at the bar and with execrable cruelty to prisoners on trial for their lives. But he stood up manfully against the King and the King's favourites. No man of that age appeared to so little advantage when he was opposed to an inferior and was in the wrong. But on the other hand it is but fair to admit that no man of that age made so creditable a figure when he was opposed to a superior and happened to be in the right. On such occasions his half-suppressed insolence and his impracticable obstinacy had a respectable and interesting appearance, when compared with the abject servility of the bar and of the bench. On the present occasion he was stubborn and surly. He declared that it was a new and highly improper practice in the judges to confer with a law-officer of the Crown about capital cases which they were afterwards to try; and for some time he resolutely kept aloof. But Bacon was equally artful and persevering. 'I am not wholly out of hope,' said he in a letter to the King, 'that my Lord Coke himself, when I have in some dark manner put him in doubt he shall be left alone, will not be singular.' After some time Bacon's dexterity was successful; and Coke sullenly and reluctantly followed the example of his brethren. But in order to convict Peacham, it was necessary to find facts as well as law. Accordingly, this wretched old man was put to the rack, and while undergoing the horrible infliction was examined by Bacon, but in vain. No confession could be wrung out of him, and Bacon wrote to the King complaining that Peacham had a dumb devil. At length the trial came on. A conviction was obtained; but the charges were so obviously futile that the Government could not for very shame carry the sentence into execution; and Peacham was suffered to languish away the short remainder of his life in a prison.

"All this frightful story Mr. Montagu relates fairly."

B.

Not if he relates it in this way; for though the particular inaccuracies, taken one by one, might seem slight and immaterial, yet what with a small omission here,

and a small addition there, aided by a general confusion of dates, I am persuaded that the total effect of this narrative upon the mind of any uninformed and unsuspecting reader would be a totally false impression of the whole transaction; and especially of Bacon's part in it. This faculty of conveying the greatest amount of false effect with the smallest amount of definite misstatement appears to be an unconscious felicity in the reviewer, more like genius than any other faculty he possesses, and akin to that subtle power of self-deception which makes "the heart of man deceitful above all things and desperately wicked." But you had better go on to the end first, and then I will begin from the beginning, and tell the story as I find it; for this will be the shortest way of dealing with it, as well as the most effectual.

A.

"All this frightful story Mr. Montagu relates fairly. He neither conceals nor distorts any material fact. But he can see nothing deserving of condemnation in Bacon's conduct. He tells us most truly that we ought not to try the men of one age by the standard of another,—that Sir Matthew Hale is not to be pronounced a bad man because he left a woman to be executed for witchcraft,—that posterity will not be justified in censuring judges of our time for selling offices in their courts, according to the established practice, bad as that practice was,—and that Bacon is entitled to similar indulgence. 'To persecute the lover of truth,' says Mr. Montagu, 'for opposing established customs, and to censure him in after ages for not having been more strenuous in opposition, are errors which will never cease until the pleasure of self-elevation from the depression of superiority is no more.'

"We have no dispute with Mr. Montagu about the general proposition. We assent to every word of it. But does it apply to the present case? Is it true that in the time of James I. it was the established practice for the law officers of the Crown to hold private consultations with the judges touching capital cases which those judges were afterwards to try? Certainly not. In the very page in which Mr. Montagu asserts that 'the influencing a judge out of court seems at that period scarcely to have been considered as improper,' he gives the very words of

Sir Edward Coke on the subject: 'I will not thus declare what may be my judgment by these auricular confessions of *new* and pernicious tendency, and *not according to the customs of the realm.*' Is it possible to imagine that Coke,—who had himself been Attorney-General during thirteen years, who had conducted a far greater number of important state prosecutions than any other lawyer named in English history, and who had passed with scarcely any interval from the Attorney-Generalship to the first seat in the first criminal court in the realm,—could have been startled at an invitation to confer with the Crown lawyers, and could have pronounced the practice *new*, if it had really been an established usage? We well know that where property only was at stake, it was then a common though a most culpable practice in the judges to listen to private solicitation. But the practice of tampering with judges in order to procure capital convictions we believe to have been new, first because Coke, who understood those matters better than any man of his time, asserted it to be new; and secondly, because neither Bacon nor Mr. Montagu has shown a single precedent.

"How then stands the case? Even thus:—Bacon was not conforming to an usage then generally admitted to be proper. He was not even the last lingering adherent of an old abuse. It would have been sufficiently disgraceful to such a man to be in this last situation. Yet this last situation would have been honourable compared with that in which he stood. He was guilty of attempting to introduce into the courts of law an odious abuse for which no precedent could be found. Intellectually he was better fitted than any man that England has ever produced, for the work of improving her institutions. But unhappily we see that he did not scruple to exert his great powers for the purpose of introducing into those institutions new corruptions of the foulest kind.

"The same, or nearly the same, may be said of the torturing of Peacham. If it be true that in the time of James I. the propriety of torturing prisoners was generally allowed, we should admit this as an excuse,—though we should admit it less readily in the case of such a man as Bacon than in the case of an ordinary lawyer or politician. But the fact is that the practice of torturing prisoners was then generally acknowledged by lawyers to be illegal, and was execrated by the public as barbarous. More than thirty years before Peacham's trial, that practice was so loudly condemned by the voice of the nation,

that Lord Burleigh found it necessary to publish an apology for having occasionally resorted to it. But though the dangers which then threatened the Government were of a very different kind from those which were to be apprehended from anything that Peacham could write,—though the life of the Queen and the dearest interests of the state were in jeopardy,—though the circumstances were such that all ordinary laws might seem to be superseded by that highest law, the public safety,—the apology did not satisfy the country; and the Queen found it expedient to issue an order positively forbidding the torturing of state prisoners upon any pretence whatever. From that time the practice of torturing, which had always been unpopular, which had always been illegal, had also been unusual. It is well known that in 1628,—only fourteen years after the time when Bacon went to the Tower to listen to the yells of Peacham, —the judges decided that Felton, a criminal who neither deserved nor was likely to obtain any extraordinary indulgence, could not lawfully be put to the question. We therefore say that Bacon stands in a very different situation from that in which Mr. Montagu tries to place him. Bacon was here distinctly behind his age. He was one of the last of the tools of power who persisted in a practice the most barbarous and the most absurd that has ever disgraced jurisprudence,—in a practice of which in the preceding generation Elizabeth and her ministers had been ashamed,—in a practice which a few years later no sycophant in all the Inns of Court had the heart or the forehead to defend.

"Bacon far behind his age! Bacon— "

B.

Hold there. The reviewer has had the talk to himself long enough. It was better to go through with him, however, because I think the subject may be best approached from this side. Before we tell the story, we will dispose of these questions concerning the practice of the times. And we will begin with the last, both because it involves the most popular, and indeed the most serious, charge against Bacon's moral character, and because in the narrative of the transaction truly told it comes first.

Nothing can be more express and decided than this assertion as to the fact. How far the presumptive argu-

ment upon which that assertion rests is conclusive, it is luckily not necessary to inquire; though I will say something about that presently; for we happen to have direct evidence which supersedes all presumptions, that the statement is inaccurate. About six months before this article appeared, Mr. David Jardine had printed a volume upon the use of torture in the criminal law of England, in which he produced from the registers of the Privy Council and other authentic documents a series of warrants extending through the reigns of Edward VI., Mary, Elizabeth, James, and the first sixteen years of Charles I., which completely prove that during the whole of that time it was an ordinary thing for the Council to authorize and direct the examination with torture of persons suspected of state offences; that in the latter years of Elizabeth this practice, instead of becoming unusual, was more frequent than before; and that, though more rarely resorted to by James and Charles, it was still occasionally authorized by them both. Nor does the form of these warrants betray the slightest doubt on the part of the Council as to the legality of the practice; but in almost every case refers to it as usual; nor can I hear of any evidence whatever that their authority in that respect was ever disputed by anybody.

A.

Was that the same Mr. Jardine who published the account of the trial of Essex and the Gunpowder Plot?

B.

The same; and therefore an authority upon whom one cannot implicitly rely. Indeed in those cases in which I have had occasion to test his accuracy, he shows such a want of judgment and discrimination, that upon any nice point of historical evidence I would not rely on him at all. But in this case he has printed all these warrants *in extenso* as they stand in the Council-books. And I think no one can read them without being satisfied that Macaulay's statement is totally inaccurate; and that whatever people may

have thought of the *propriety* of using torture, the *right* of the Crown to authorize it had not as yet been doubted. As for the decision of the judges fourteen years after, even if it had touched the point in question (as I will presently show you that it did not), that is nothing to the purpose. Between 1614 and 1628 the nation was not only so many years older, but so many years further on its way to a civil war, and had begun to question many things which had not been questioned fourteen years before.

A.

But I thought Sir Edward Coke himself had declared torture illegal, quoting the authority of Fortescue, who wrote as early as Edward IV.'s time?

B.

So he did. But when? At the time of Peacham's examination, although he was never in a more eager humour of opposition to the court, he made no such declaration. And six years later, in a case of exactly the same kind, he himself as privy councillor did actually sign a torture-warrant. The declaration to which you allude was made many years after in his "Institutes." And it is rather remarkable that that very passage, if carefully read, is scarcely more decisive as evidence that he *then* thought torture illegal, than that it was then ordinarily practised. If all other evidence were lost, I should myself confidently appeal to that very passage as a proof that the right to examine prisoners with torture had, for anything Coke knew to the contrary, been assumed by the Council since the time of Henry VI.

A.

Explain.

B.

It occurs in the second chapter of the third book, where he is explaining the process of trial for treason. There are

two places in which he speaks of torture, and they refer to two different stages of the process; the trial itself, and the imprisonment preliminary to the trial.

With regard to the first, he finds that no man is to be indicted, arraigned, condemned, or convicted, &c. &c., "unless he be accused by two lawful and sufficient witnesses, *or shall willingly without violence confess the same;*" and because this latter clause might be thought to apply only to a confession made at the arraignment, leaving it doubtful whether a confession which had been extorted by violence at a previous stage might be used at the arraignment as evidence, he proceeds to quote a decision of the Judges in 14 Eliz., who resolved that these words were to be understood as extending to the "examination before the arraignment." Had he been content with quoting this decision and had left it there, it would indeed have proved nothing for my purpose. The grounds for such a conclusion are simple, obvious, and satisfactory enough. But he goes on to justify it by a reason which I suppose is his own. They resolved, he says, that the words are "not meant of a confession before the judge, for he *is never present* at any torture; neither upon his" (that is, the prisoner's) "*arraignment* was ever any torture offered." In other words—The law says that the confession must be without violence. What confession? Not the confession which he makes before the Judge; because then no violence was ever offered. Therefore it must refer to some previous stage of the proceeding,—at which violence *was* offered. The argument, you will see, however inconclusive for its own purpose, is conclusive for mine. It certainly implies that there *was* a stage of the proceedings at which torture was used to draw forth confession. If not, there is no sense in it. Nor does Coke in this place raise any question as to the legality of it. He admits that it was used; he does not say that it was against law, but only that upon a confession so procured the prisoner cannot be arraigned.

It is true that in treating of the other stage—the imprisonment before trial—he does give a very decided

opinion against the *legality* of torture. But again does he deny the practice? On the contrary he again (by implication) admits it. Having cited a variety of authorities to prove that a prisoner must not be *put to any pain* before he be attainted, (in which I may observe, by the way, that the application of the words to *examination* with torture is inferential, not direct; for it is plain they are only speaking of pain inflicted by way of *punishment,*) he remembers the existence of the rack. If prisoners are never to be put to any pain before they are attainted, what is the rack in the Tower for? He could not say that the use of it had been long given up—which would have been the simplest answer. He could not say that it was an old thing grown obsolete. On the contrary, he says that it was not old enough; that it was an innovation not sanctioned by the common law. In the 26th year of Henry VI. he tells us, the Dukes of Exeter and Suffolk intended to have brought in the *civil law;* "for a beginning whereof the Duke of Exeter, being Constable of the Tower, first brought into the Tower the Rack or Brake, allowed in many cases by the civil laws." But "upon this occasion" (he adds) "Sir John Fortescue, Chief Justice of England, wrote his book in commendation of the laws of England; and therein preferreth the same for the government of this country before the civil law,—and particularly that all tortures or torments of parties accused were directly against the common laws of England; and showeth the inconvenience thereof by fearful example; to whom I refer you, being worthy your reading." And upon this, without quoting any statute, any decision of the Judges, any official order, any remonstrance, or any other express opinion of any kind, by which the legality of the rack had been questioned since its introduction, he proceeds to draw his conclusion, viz. "that there is *no law to warrant tortures* in this land; nor can they be justified by any prescription, *being so lately brought in.*" He then sums up the whole by saying that they are against Magna Charta, that all the *ancient* authors are against them, and that there is no

opinion in our books or judicial record *for the maintenance of them.*

Now mind, I am not disputing the force of the argument as affecting the question whether the use of the rack was legal or not. That would involve us in the dispute (which can never be settled) as to the respective provinces of law and prerogative. But the question with which we have to deal is a simple one,—not was it legal, but was it customary, for the Council to authorize torture? not was it a power which they had a right to assume, but was it a power which they did in fact assume ordinarily and without dispute? Coke's argument is that they had no *right* to exercise such a power, because there was no law to warrant it, and custom could only be pleaded during the 180 years (or thereabouts) preceding. But *could* they then plead custom for so long a period? I presume they could, or he would surely have denied it. He would never have contented himself with such negative evidence if he had had any positive evidence to adduce. If the use of the rack in the examination of prisoners before trial under a warrant of the Council had been abandoned, or pronounced illegal by any Judge, or called in question by any considerable authority since Fortescue, he would surely have mentioned the fact.

I conclude therefore that, to the best of Sir Edward Coke's knowledge, (and no man had so good means of knowing,) the right of examining prisoners with torture had not only been assumed and occasionally exercised by the Crown for more than a century and a half before the trial of Peacham, but that it had been generally admitted and acquiesced in.

A.

Certainly it would seem so. And yet I do not well understand how the question could have remained doubtful. That there should have been such an uniformity of negative evidence against the legality of torture, and none that was positive, is surely very strange. If the practice had subsisted

so long, and was not countenanced by the law, how is it that it did not come into collision with the law? A prisoner, being arraigned upon a confession which had been drawn from him by torture or fear of torture, would surely have pleaded that circumstance in court. The court must either have overruled the plea, which would have been almost equivalent to a positive admission that torture was legal; or have acquitted him, which would have been an express judgment that it was illegal.

B.

True. But I think this may be explained. And the explanation points to an important distinction as to the use of torture, which has been overlooked. Torture, I conceive, was never used in England for the purpose of obtaining a confession *which was to be used as evidence of the fact;* but only for the purpose of obtaining *information* which might lead to the *discovery* of further evidence. An important distinction, I say; as bearing not only upon the absurdity, but also upon the barbarity, of the practice. For in the first place, if torture were only used to induce a man to tell something which you are sure he can tell if he likes,—whatever objections it may be liable to on other grounds, no one can say that it is absurd. It may certainly be made in that way a very effectual and expeditious mode of discovering the truth. For instance: a man denies that a certain paper is in his handwriting. To apply torture to make him confess that it is, would be absurd; his confession under such circumstances would only prove that he had rather be hanged than racked. But to apply it for the purpose of inducing him to write some words on a piece of paper, would not be at all absurd; for the writing would prove the very thing you want to know. In the second place, as there is certainly more sense in the practice used with this limitation, so there is much less objection to it on the score of humanity; for in that case he may not only avoid it by doing what is required, but release himself from it as soon as he pleases.

Now though it would be too bold a presumption to hope that this limitation was never transgressed in practice, yet I do believe that this was the only use of torture which was ever in England recognised as legitimate. And one may the more easily believe that it was seldom stretched further, because (as you observe) any attempt to extort evidence to ground the arraignment upon (it being illegal to arraign a man upon his own confession so extorted) would inevitably have brought this power of the Council into collision with the law. And in corroboration of this, I can produce a short passage from Bacon himself, which Mr. Jardine misquotes and cannot understand,—for want, as I suppose, of observing this distinction; for nothing can be clearer than the meaning of it.

It occurs in his tract on the pacification of the Church, which was written at James's entrance in 1603; and is of the more weight because it comes in by way of admission, as a fact which makes against his argument. He is recommending certain reforms in the ecclesiastical government; and one of the points he objects to is the power assumed by the high commission of compelling accused persons to answer upon oath. His words are these :—

"There is a third point also, not of jurisdiction but of form of proceeding, which may deserve reformation, the rather because it is contrary to the laws and customs of this land and state; which, although they do not rule those proceedings, yet they may be advised with for better direction; and that is the oath *ex officio;* whereby men are enforced *to accuse themselves;* and (that that is more) are sworn unto blanks, and not unto accusations and charges declared. By the laws of England no man is bound to accuse himself. In the highest cases of treasons, *torture* is used *for discovery* and *not for evidence.* In capital matters no delinquent's answer upon oath is required,—no, not permitted;" and so on. "But to examine a man upon oath out of the insinuation of fame or out of accusations secret and undeclared, though it have some countenance from the civil law, yet it is so opposite *ex diametro* to the sense and course of common law, as it may well receive some limitation."

This passage is to me conclusive of three things :—

1. That in the year 1603, torture was used in certain cases, and known to be used.

2. That if the use of it in those cases was *illegal*, Bacon was not aware of it; for had it been condemned and given up as contrary to the laws and customs of the land, he would have cited it as in favour of his argument, instead of admitting it as a fact which required explanation.

3. That though confessions were in those cases sometimes obtained by torture, yet confessions so obtained were not used for evidence, but only for *discovery;* that is (as I said), to gain information which might lead to discovery; the discovery, for instance, of a man's accomplices, of other plots, and the like.

The argument stands thus:—"By law (says Bacon) no man is bound to accuse himself." "How can that be (says the supposed objector) when torture is used?" "It is true (replies Bacon) that in certain cases torture *is* used; but not *so* used as to violate that principle of the law; for what a man confesses under torture is never used as evidence against him."

The distinction, I admit, is a nice one; and must in practice have been liable to many evasions and transgressions. But still it is intelligible; and, supposing it scrupulously observed, does certainly disarm the practice of much both of its absurdity and inhumanity. At any rate, I cannot doubt that such the practice was. From Coke's acquiescence in it during the whole time that he was Attorney-General, Chief Justice, and Privy Councillor; from his silence afterwards as to any disuse of it in fact or any condemnation of it by authority, when he was doing his best to prove it illegal, and his argument stood much in need of some such confirmation; from Bacon's admission of it as a fact not to be denied, when his argument was considerably weakened by the admission; finally, from the long and uninterrupted series of torture-warrants adduced by Mr. Jardine, exhibiting not less than fifty cases during the sixty or seventy years preceding, in the course of which every one (I think) of the leading judges and statesmen had been at one time

or another cognisant of the practice, either as councillor to authorize or commissioner to execute; we cannot but conclude that the application of torture in the investigation of offences against the state was in the year 1614 a power ordinarily assumed and exercised without contradiction by the Council;—a power, it is true, originally derived from the civil law, and against the spirit of our own; but not the less possessed in fact, and acquiesced in as residing in the prerogative; that prerogative which belonged to the Crown by custom and prescription, and like the privileges of the Commons at this day, was not amenable to the authority of the courts of law. As the Commons now assume the right to commit any commoner to prison for what they adjudge to be a contempt of their authority, so the Crown then assumed the right to put any commoner to torture for what it adjudged to be obstinacy in refusing to answer interrogatories. As the Judges cannot now call upon the Commons to justify the committal, so they could not then call upon the Crown to justify the torture.

A.

You mean that the law was so understood in 1614. How came the judges to decide otherwise in 1628?

B.

I do not admit that they did decide otherwise. It is singular that so important a decision should not have been more formally recorded. But, as far as I can learn, we know it only from the report of Rushworth, who was not a lawyer; and his report is so far from conclusive that Mr. Jardine believes him to have been entirely mistaken as to the point which was referred to the Judges for decision. However, I will not stand upon that. Take Rushworth's account as it stands, and see what it amounts to.

Felton having confessed the murder of Buckingham, a question arose in the Council whether he might be put to the rack. The point upon which the doubt turned is not stated. It may have been upon this,—that the case was

not treason, but felony; and there was no precedent for torture *in a case of felony* since Elizabeth's time; or it may have been upon this,—that there being no evidence of any confederacy, it was not certain that he had anything to disclose; there was no ground therefore for applying torture for *discovery*, for which only it could be applied legitimately. This doubt being raised, the King desired that before anything were done the Judges should be consulted whether it were legal or no—(an extra-judicial consultation by the way upon a capital case which they were afterwards to try). "For (said he) if it might be done by law, he *would not use his prerogative in this point.*" The Judges decided that "he ought not *by the law* to be tortured, for no such punishment is known or allowed *by our law.*"

Now I say that the question which this answer settled was quite distinct from the question which was raised by the examination of Peacham. You see that in referring to the Judges the point as to the power of the *law*, the King expressly distinguished and reserved the *other* point as to the power of the *prerogative.* To this, therefore, their answer does not expressly apply; neither was it so understood at the time. For Mr. Jardine's records prove that in fact that power was not given up in consequence of the decision, but was used twelve years afterwards; the last year in which it was used being also the last year in which the Council retained its power of arbitrary imprisonment; which was taken away by act of parliament.

I repeat therefore that this famous decision of the Judges, far from justifying the reviewer's inference that "no sycophant in all the Inns of Court had the heart or the forehead to defend" the practice, as it had prevailed up to that time, does not even prove that in the opinion of the Judges it was illegal. It proves this, and this only, that it was not a thing with which the Courts could have anything to do.

A.

That certainly makes a material difference, and disarms

me of an objection which I was on the point of making just now. I was going to say, that although it be true that both men and nations learn many new things in fourteen years, and although it might be very bold to oppose in 1614 the very same thing which it might be very extravagant to defend in 1628,—nevertheless if the practice was really *illegal* at the latter period, it must have been really illegal all along; that both Bacon and Coke must have known it to be so; and though they might not be able to prevent it, should at least have represented it as such to the King; the one in his character of legal adviser, the other (still more) as judge and councillor. But it would seem from what you said last, that in point of *law* they had really at the time of Peacham's trial no *case* for remonstrance. If your statement be accurate, it seems that there was no law to warrant torture, only as there is no law to warrant the imprisonment of a man for refusing to serve on a committee of the House of Commons. I suppose the Judges could not have helped the Commons in the case of Smith O'Brien, any more than they could help Charles in the case of Felton. But as the privilege of the house is not now disputed in the one point, so the prerogative of the Crown was not then disputed in the other. The reviewer's main argument therefore, I admit, must go. But what do you say to the order issued by Queen Elizabeth, "positively forbidding the torturing of state prisoners on any pretence whatever," and to the loud condemnation of the practice so many years before "by the voice of the nation"? Though that would not affect the question in point of law, it does affect it very much in point of reason, policy, and humanity. Within these ten years last past, there were punishments which might have been legally inflicted, the infliction of which would nevertheless have been deeply disgraceful to any person concerned in it.

B.

Why, with regard to Elizabeth's order, I can only say that I should like to see it. Macaulay, I suppose, took the fact from Hallam, who does say that Elizabeth "ordered

the torture to be disused;" the differences which appear in his statement—the "*positively*" and the "*upon any pretence whatever*"—being probably due only to his taste for strong writing. And Hallam's authority was Camden, who says (A.D. 1584, p. 613), "*At hæc* (meaning the apology) *Reginæ minime satisfecerunt quæ cognitores tormentis et judices suppliciis abstenere jussit.*" Now if punishments by judicial sentence were as much forbidden as examinations with torture, it is plain that it can only have been in some particular case. That in some particular case or under some particular circumstances Elizabeth forbade torture, is very likely. That she ever issued a general prohibition, I do not believe. Certainly her Council continued to issue torture-warrants all the same.

Then again, that the practice was "loudly condemned by the voice of the *nation;*" of this also I require evidence. The reviewer appears to have inferred it from the fact that Burghley published an apology for having (as he says) "occasionally resorted to it." Occasionally? Yes, but on what kind of occasions? The occasion was the racking of Campion, the Jesuit. Do you suppose the "nation" was very sensitive as to severities upon jesuits? Read the journals of parliament, or look into the Statutes, and you will see. The "nation" was more likely to have condemned Burghley for not racking him enough. It was the *Catholics* for whom the apology was written. The Catholics, both in England and abroad, were naturally very sensitive on that head; naturally eager not only to sympathize with the sufferers, but to improve the topic for the purpose of making the government odious. The press teemed with libels in which all such severities were greatly exaggerated and misrepresented. It was against these no doubt that Burghley's apology was directed. The Catholics being a very formidable body, (especially while Mary of Scotland was alive, and the Spanish Armada was in preparation,) it was of great consequence to remove from the government any unjust imputation of severity in dealing with them.

A.

If that be so, the publication of Burghley's apology proves nothing for Macaulay. And Bacon will be entitled, even upon his own showing, to all the allowance which Mr. Montagu pleads for him. It had struck me before as odd, that he should be charged with being "distinctly behind his age" for taking part in a business in which, if I remember right, all the Privy Councillors, except Coke, and all the Learned Counsel, were equally concerned.

B.

And to which Coke himself made no opposition and suggested no objection. It is true that he did not sign the warrant; but that I think was only because he was then Chief Justice, and it had never been usual for the common law Judges to take any part in examinations with torture. For, six years later, when he was no longer a judge, but still a Privy Councillor, he did sign a similar warrant, as I told you.

A.

I remember. But tell me one thing: you said that Mr. Jardine's volume was printed about half a year before the appearance of this review. Had Macaulay seen it?

B.

Not before his article was written, I think. He saw it afterwards.

A.

Before his articles were collected and republished with his name?

B.

Yes, certainly.

A.

And has he made no alteration in consequence?

B.

No alteration; but he has alluded to it in a foot-note; of which I am glad you have reminded me. It is a curious illustration of his way.—You need not read his words over again; but turn your eye to the last two pages which you read, and recal the substance of his argument.

Mr. Montagu pleads in Bacon's behalf that he was only conforming to the established practice, though a bad one, of the times; and that he is entitled to the same indulgence as those Judges in our own times who have sold offices in their courts,—also a bad practice, but also an established one.

Macaulay admits the principle, but denies the application; asserting that the practice of torturing prisoners, far from being generally allowed, "was *then* generally acknowledged by lawyers to be illegal, and execrated by the public as barbarous."

Mr. Jardine proves by evidence absolutely incontestable, that certainly for more than half a century (probably for more than a century and a half) preceding, and for a quarter of a century after, the practice of torture, whether legal or not, was strictly speaking *ordinary;* and that the right of the Council to authorize it, whether questionable or not, was exercised at their discretion and never called in question. Mr. Jardine himself goes further and speaks of this authority as *unquestionable;* but as that point admits of dispute, I pass it; and insist only upon the fact, which admits of no dispute, that the torturing of prisoners in certain cases was during the whole of that period *an ordinary and established practice.*

Well; all this Macaulay hears of; we will hope, reads; at any rate learns the substance in the Edinburgh Review, where it is very clearly and accurately reported. And how does he notice it? Listen!

"Since this review was written, Mr. Jardine has published a very learned and ingenious Reading on the use of Torture in England. *It has not however been thought necessary to make any change in the observations on Peacham's case.*"

A.

That is odd.

B.

Yes; but hear his reason, which is also odd.

"It is impossible to discuss within the limits of a note the extensive question raised by Mr. Jardine. It is *sufficient here to say* that every argument by which he endeavours to show that the use of the rack was anciently a *lawful exercise of the prerogative*, may be urged with equal force, nay with far greater force, to prove the *lawfulness* of benevolences, of ship-money, of Mompesson's patent, of Eliot's imprisonment, of every abuse without exception which was condemned by the Petition of Right and the Declaration of Right."

And that is literally all he thinks it necessary to say.

So because in the year 1628 the two Houses of Parliament complained that certain things which they voted illegal (torture by the way *not* included) were practised by the Crown; and because in the year 1688 those things were at last declared by authority to *be* illegal;—we are to conclude that in the year 1614 all those practices (torture included) not only were illegal, but were generally considered to be so; not only were generally considered to be so, but were *not* in fact ordinarily practised! For you will observe that the total question at issue between Macaulay and Mr. Montagu turns upon this last point. The distinction between law and prerogative, and the fact that a power might reside in the prerogative which though apart from the law was not illegal, may be set aside for the moment. The question between the reviewer and Mr. Montagu is not, was the use of the rack a *lawful*, but was it an *ordinary*, exercise of the prerogative? a question which the Petition of Right does not by any means settle. What if it was resolved, in 1628, that the practice was contrary to law? That cannot prove that in 1614 it was *understood to be* contrary to law. What even if it could

be proved that in 1614 it was understood to be contrary to law? Still it would not follow that it was contrary to the custom of the time. For to know that practices which not only are, but are universally understood and declared to be, contrary to *law*, may nevertheless be very ordinary and very generally acquiesced in,—we need not look beyond the preparations for the next general election. There is not a single member of parliament who doubts that bribery at elections is illegal. Yet I wonder how many of the 658 have not been directly or indirectly concerned in it.

A.

You need not trouble yourself for illustrations. You have prepared me to expect many odd things from Macaulay, but I was not prepared for this note. What awful considerations it suggests when one remembers that he is devoting himself to history! What chance has a man of guarding himself against mistakes by his own diligence and sagacity, who cannot see such a mistake as this when it is found out for him by the diligence of another, and thrust into his face?

B.

Since we have it however, let us improve it for our own edification. His reference to the Petition of Rights suggests an illustration which will put our subject in a clearer view.

That petition grew, as you know, out of the abuse of the prerogative; out of a too violent and arbitrary exercise of certain powers which were then assumed to belong to the Crown. Let us (as we have done once before) substitute for prerogative that which (now that the House of Commons is King) bears a very close analogy to it—privilege. I suppose you know that the House of Commons at this day claims the right of committing to Newgate any commoner whatever who breaks its privileges. You know that any indignity offered to its character or proceedings, by libellous reflexions either upon the House generally or upon any member of it, is a breach of privilege. You know also that

the House itself claims to be the sole judge of the fact whether such a thing be a breach of privilege or not. And you know that if any person so committed be brought by habeas corpus before the Justices of the Queen's Bench, his keeper has only to produce the Speaker's warrant, and he will be returned to prison without further hearing. This you see is in almost all points analogous to the ancient case of a person committed by warrant of the Council for libellous reflexions on the Crown.

Now let us suppose that the House of Commons should hereafter abuse this large privilege (as they probably would if they were an hereditary body) until it became odious and intolerable. Suppose upon this the people should get up a petition, in the exact words (*mutatis mutandis*) of the Petition of Right—as thus :—

"Whereas by the statute called the Great Charter of the Liberties of England it is declared and enacted, that no freeman may be taken or imprisoned or be disseised of his freehold or liberties or his free customs, or be outlawed or exiled or in any manner destroyed, but by the lawful judgment of his peers or by the law of the land;

"And in the 28th year of the reign of King Edward III. it was declared and enacted by authority of parliament, that no man of what estate or condition that he be should be put out of his lands or tenements, nor taken nor imprisoned, nor disherited or put to death, without being brought to answer by due process of law;

"Nevertheless, against the tenor of the said statutes and other the good laws and statutes of the realm to that end provided, divers persons have of late years been imprisoned without any cause shewed; and when for their deliverance they were brought before [the Justices of the Queen's Bench] by writs of habeas corpus, there to undergo and receive as the court should order; and their keepers commanded to certify the causes of their detainer; no cause was certified but that they were detained by special command of [your honourable House, signified by the Speaker's warrant], and they were returned back to their several prisons without

being charged with anything to which they might make answer according to the law;—

"They do therefore humbly pray—" and so on.

Suppose this Petition of Right to prevail, and a resolution or an act to pass declaring such detention contrary to law, in the exact terms (*mutatis mutandis*) of the Declaration of Right;—what would you infer?

A.

I might infer many things, but I should certainly *not* infer that such detention is contrary to the law as it stands now.

B.

Nay, I do not know that. If only *declared* illegal then, it must *be* illegal now.

A.

Well then, that it is *generally held to be* illegal now,—one certainly could not infer that;—or that it is not an ordinary and established exercise of authority; least of all that the Attorney-General who maintains the privilege in the House, or by order of the House defends it in court, is behind his age; and either attempting to introduce a new abuse or persisting in an abandoned one. And this (*mutatis mutandis*) is the point with which we are at present concerned; for it is no less than this that Macaulay would have us infer in the analogous case.—Yes, I think the analogy sound: and altogether I think you have made it out clearly that his argument has nothing in it, and that the part which Bacon took was fully countenanced by the practice of the times,—whether the practice were a defensible one or not.

B.

Yes, but do not draw your conclusions until you know what part Bacon really did take. I shall have something to say about that presently.

But before we come to it, there is another question to be

disposed of. He is charged with being behind his age, not only in the matter of torturing, but also in consulting with the Judges. To establish this charge, the reviewer roundly asserts that it was not the practice in James's time for the law-officers of the Crown to hold private consultations with the Judges touching capital cases which they were afterwards to try. Now if by private consultations be meant (as I presume it is) *consultations out of court*, I roundly assert that it was. And though I admit that he may quote the opinions of some eminent modern lawyers in favour of his assertion, yet I do not admit that as an excuse; because in the very same letters which contain the case of Peacham he might have found decisive evidence that they were wrong.

Let us first examine the grounds upon which he himself professes to rest his assertion.

"The practice of tampering with Judges in order to procure capital conviction,"

he says, (meaning the practice of conferring privately with Judges in capital cases which they were afterwards to try, —as he expresses it more accurately a few sentences before,)

"we believe to have been new, first because Coke, who understood those matters better than any man of his time, asserted it to be new; and secondly, because neither Bacon nor Mr. Montagu has shown a single precedent."

In answer to the first of these reasons I will show you that the reviewer has strangely mistaken the point of novelty at which Coke checked; and that Coke never did assert the practice of extra-judicial conferences to be *new*. This being made out, the other reason falls away of itself; for why should Bacon have troubled himself to produce precedents of a practice which everybody knew to be an ordinary one? A novelty no doubt there was, of which no precedent could be produced; but it is important to know what the nature of it was, and the cause. I can speak the more confidently about it, because the whole story is gathered merely out of Bacon's letters, and nothing can be clearer than his account of it.

The case then was this. It was proposed to indict Peacham for treason. But in those anxious times, when so many doubtful questions were newly stirred, and the Crown was engaged in a struggle so critical, and so full of immediate embarrassment, and was upon the brink of issues so hazardous, it was of more than usual importance that in all its proceedings it should be strengthened with the full authority of the law. Peacham's transgression was on the popular side. An ineffectual attempt to punish it, especially if frustrated by the opposition of the *Judges*, would have been not only what was then considered a *dishonour* to the King, but a substantial damage to the royal authority. It would have been regarded by the opposition as a victory. It was better to pass the offence by than to attempt to punish it at the risk of a defeat; just as at this day no prudent government would prosecute a popular offender, however heinous, before a jury predetermined to acquit him. The King was himself persuaded that in this instance the case for the prosecution was good in law. But before he proceeded further, he wished to be sure that the judges took the same view of the law which he did. For this purpose he desired that (according to the practice of the times in doubtful cases) their opinion should be asked beforehand.

A.

According to the practice of the times! You are assuming the very point in dispute.

B.

I will prove it in a few minutes. I must assume it for the present in order to tell the story.

Well. But the King knew by experience that it was not an easy thing to obtain the opinion of the other Judges when Coke was among them; who so overcrowed them by the weight of his reputation, the overwhelming resources of his legal erudition, his mastery in law-logic, whereby he could turn the edge of the law which way he pleased, and above all by sheer strength of will, that they had no opinions

of their own. And James, being by this time no contemptible lawyer himself, and knowing very well that Coke, however overwhelming, was far from infallible, had a mind to know what the others would think when they had no prompter. Accordingly he desired to have their opinions taken separately, each answering for himself, without any communication with his fellows. This, from all I can collect, was entirely his own device, and was first conveyed in a letter to the Council giving express directions that it should be done. And this it was that was the novelty. The letter (it seems) was read at the Council-table, where Coke was present He, perceiving no doubt the drift of it, objected; "seeming to affirm (says Bacon) that such *particular* and, as he called it, *auricular* taking of opinions was not according to the customs of the realm, and seeming to divine that his brethren would never do it." He consented, however, upon Bacon's suggestion, that on that point they should be left to answer for themselves. That it was not the customary course appears to have been admitted. But Bacon urged that every Judge was bound expressly by his oath to give the King counsel when he was called; that whether he should do it jointly or severally rested on the King's pleasure; and that, though it was true that "the *ordinary course* was to *assemble* them" (*i.e.* to ask their advice in a body), "yet there might intervene cases wherein the other course was more convenient." What reply Coke made at that time is not stated; but a day or two after, when Bacon attended him to ask his own opinion upon the case (according to the King's directions), separately, he repeated his former objection in stronger terms. But did he say that Judges were not to give opinions out of court upon cases that were to be tried? By no means. He only said that they "were not to give opinions *by fractions*, but *entirely*, according to the vote whereupon they should settle *upon conference;* and that this *auricular* taking of opinions *single and apart* was new and dangerous." To which again Bacon replied as before, by repeating his former argument: that it was "a reasonable and familiar

matter for a King to consult with his Judges, either assembled or selected, or one by one;" that "Judges might sometimes make a suit to be spared for their opinions till they had spoken with their brethren; but if the King upon his own princely judgment, for reason of estate, should think fit to have it otherwise, and should so demand it, there was no declining;" for their oath was "to counsel the King—without distinction whether it were jointly or severally." In the end Bacon left the papers with him, without pressing him to say whether he would consent or not to deliver a separate opinion; for Coke still thought that the others would refuse. "His brethren (he said) were wise men, and might make a show as if they would give their opinion as was required, but in the end they would say they doubted of it, and so *pray advice with the rest.*"

Still you see there is no hint of any objection to the *extra-judicial* character of the consultation; no question whether the Judges might be asked for their opinion upon the case before it came on for trial; but only whether they might not insist upon a consultation among themselves before they gave it.

The next day, or the next but one, Bacon attended him again, laid before him at large the case for the prosecution, and the precedents upon which it was grounded, and asked him for his opinion. Coke did not object to hear the case argued, but listened patiently, took notes, asked questions, and kept the precedents, "that he might advise upon them." Ten or eleven days after, Bacon told him that the others were ready to make their report, and "he was now to require his opinion, according to his commission."—"He said I should have it; and repeated that twice or thrice, as thinking he had gone too far in that kind of negative (to deliver any opinion apart) before; and said he would tell it me within a very short time, though he were not that instant ready." Within three days he delivered his answers in writing: and that is the end of the story.

Now I conceive that this distinction which I have pointed out is a very important one. For the gravamen of

the charge which the eternally quoted Sir Michael Foster makes against Bacon for his part in this transaction turns entirely upon the overlooking of it.

A.

What is his charge? I have seen it quoted, but I forget the words.

B.

He says that, upon the facts as gathered from Bacon's account of the matter, he had but one reflexion to make; which is, that "This method of *forestalling the judgment of a court* in a case of blood then depending, at a time too when Judges were removable at the pleasure of the Crown, doth no honour to the memory of the persons concerned in a transaction so insidious and unconstitutional, and at the same time greatly weakeneth the authority of the judgment." No doubt it does; and no man will deny that both the authority of the Judges and the security for the pure administration of justice have been infinitely increased by the modern system, which both forbids the Judges to give opinion upon a case until it comes before them in open court, and makes them irremovable at the pleasure of the Crown. Experience of corruptions and abuses suggests such reforms as these. Similar experience will suggest similar reforms in many usages which no man now thinks of disputing. The time *may* come, though it has not come yet, when it will be expedient to deprive the government of the power of removing at pleasure a magistrate from his office; or to prohibit gentlemen who preserve game from committing poachers or sitting on the bench at Quarter Sessions. But will it ever be the duty of an *Attorney-General* to force on such reforms, by opposing the clear authority of the government in the one case, or advising an arbitrary exercise of it in the other? I think not. I do not know that any one has yet imputed it to Bacon as a great crime that he did not refuse to draw up a supersedeas for a Judge, on the ground that Judges *ought to be* irre-

movable except upon an address from both Houses. But it would certainly be as reasonable to blame him for that as for not refusing to confer with the Judges out of court upon a case of blood then depending. For it is not more certain that the Crown had then a right to remove Judges at its own discretion, than that the law-officers of the Crown were then in the habit of conferring with Judges out of court upon such cases. If we had no more evidence than the very passages upon which Sir Michael Foster's reflexion is made, it would be as clear as possible that the "forestalling the opinion of the Judges," as he calls it, (that is, the asking of their opinions beforehand,) was an ordinary thing which no man then thought of objecting to. It is admitted in the very terms. "The ordinary course was to assemble them." The "Judges were to give their opinions according to the vote whereupon they should settle *upon conference*." "His brethren would say they doubted of it (*i.e.* whether the case were treason), and *pray advice with the rest*."

But this is not all; nor nearly all. We have more direct evidence of the fact. And we need not go far to find it, for it lies in one of the very letters which contain the other. The same letter which reports Coke's final consent to send his answer concerning the case of Peacham, begins thus: "Myself with the rest of your Learned Counsel conferred with my Lord Coke and the rest of the Judges of the King's Bench only, being met at my Lord's chambers, concerning the business of Owen." [Owen was to be indicted in the King's Bench for having said that "if the King were excommunicated, it was lawful for any man to kill him."] "For although it be true that your Majesty in your letter did mention that the same course might be held in the taking of opinions apart in this, which was prescribed and used in Peacham's case; yet both my Lords of the Council and we among ourselves holding it in a case so clear not needful, but rather that it would import a diffidence in us, and deprive us of the means to debate it with the Judges (if cause were) more strongly (which is somewhat), we thought best rather to use this form."

The Judges then were consulted upon this case of blood then depending, according to the ordinary practice, in a body,—being met at the Chief Justice's chambers. What did they do?

"The Judges desired us *to leave the examinations and papers with them* for some little time to consider (*which is a thing they use*), but I conceive there will be no manner of question made of it. My Lord Chief Justice, to show forwardness (as I interpret it), showed us passages from Suarez and others, whereby to prove," &c., &c., "and therefore that *the treason was as de præsenti.*"

This you see has all the character of a "forestalling of the Judges' opinions in a case of blood then depending," as Sir Michael Foster calls it,—a "private confutation between the law-officers and the Judges touching a capital case which these Judges were afterwards to try," as the reviewer calls it,—and no suspicion of an objection is hinted at. Only the Judges take a little time to consider: to consider what? whether they ought to give any answer beforehand? no, but to consider the papers and examinations which contain the case;—which is a thing *they use:* Coke himself alone volunteering an opinion at once, for which he was not asked,—an opinion that the case against the prisoner was sufficient. If you are not satisfied with this evidence, look at the proceedings in the case of Overbury, which took place the very next year, in which Coke, being still Chief Justice, was engaged in actually getting up not less than seven indictments for murder, five of which were to be tried in his own court; and in the course of that duty repeatedly volunteered his opinion to the King, sometimes individually, sometimes in conjunction with the other Judges; repeatedly consulted with the law-officers of the Crown; and neither he nor any one else dreamed that there was any impropriety in it.

Upon the whole, therefore, I think I may conclude, without inquiring further, that the real novelty in Peacham's case was only this,—that the King insisted on having the Judges' opinions taken *separately*, and that the real ground

of Coke's opposition to it was, that it deprived him of the power of directing the opinions of the rest.

A.

Yes, I think you may; and it certainly makes a great difference. It makes the innovation a matter of comparatively small moment. But when was it that the practice of extra-judicial consultations was given up? I always thought that Coke himself had been the great authority against the legality of them.

B.

I rather think he is entitled to the credit of having first pointed out the impropriety of the practice. But it does not seem to have occurred to him while he was a Judge himself. He thought of it when he was writing his Institutes; and I can almost fancy that I see the very passage, in the composition of which it first came into his head. He was explaining the process of trial for petty treason; and coming to the rule which prohibits the prisoner from the aid of counsel to conduct his defence and answer the prosecutor, it occurred to him that the reader might wish to know by what reason such a rule could be justified. For the reason was not self-evident; and yet there must be a reason, or how could it be law? And what do you think he hits upon? After noticing one or two explanations only to set them aside, he gravely proceeds to tell us, that "the true reason is that the testimonies and proofs of the offence *ought to be so clear and manifest, as there can be no defence to it!*" An assumption very characteristic of the man, which one can very well fancy him to have acted upon, so long as he was himself either prosecutor or judge, with perfect satisfaction; the idea that anything to the purpose *could* be said against the side which he was on, being one that his mind could never take. But now that he was considering the question in general,—not as in a proceeding which he had any part in himself, but regarding it as a jurist, and imagining the case of a prisoner charged by an

Attorney-General who might be wrong, before a Judge who might be precipitate,—when he thus saw the rule and the reason of the rule lying side by side on his paper, I fancy it did occur to him that it would not do. Only mark the argument. The prisoner has heard for the first time the charge and the evidence against him. It has been got up by practised lawyers, with every advantage of skill, time, scope, and money. He, an unlearned, possibly an uneducated man, who has all the time been shut up in ignorance and without advice, must make his defence for himself *ex tempore*. He may not even have the aid of a practised lawyer to answer the practised lawyer who has set forth the evidence against him. Is not that unfair? No, says Coke, because the proofs against him *ought to be* so clear that he can have no defence to make! That is to say, no man *ought* to be prosecuted except upon proof so absolute that the prosecutor, without hearing what he has to say in answer, may be *sure* that nothing he can say will shake it. The absurdity, though it had been overlooked by my Lord Coke, the Judge and Councillor, was too glaring for Sir Edward Coke, the parliamentary champion of the popular cause. Casting about, therefore, for a better justification of the rule of law, he falls upon the notion that "the *court* ought to be instead of counsel to the prisoner,—to see that nothing be urged against him contrary to law and right;" or, as he expresses it rather more fully in another place, "the court ought to see that the indictment, trial, and other proceedings be good and sufficient in law; otherwise they should by their erroneous judgment attaint the prisoner unjustly." *

Even this reason, if you consider it, does not quite reach the point; because in the case of an innocent man, the question of guilty or not guilty turns not upon the legality of the proceedings, but upon the evidence of the fact. The hardship for the prisoner is, that he must contend under every disadvantage, and without any help, to remove the impression produced upon his triers by an array of evidence

* Institutes, Part III., p. 29.

collected, arranged, and set forth against him with every advantage. Coke does not seem even now to have ventured so far ahead of his own generation as to suggest the modern doctrine, that the Judge ought to act as the prisoner's *advocate*. However, to say that he ought to see fair play, and not act as advocate on the other side, was a great advance beyond his own former practice; and let him have full credit for that.

Having got so far, it further occurred to him, as a corollary, that the Judge ought to be in an impartial frame of mind; therefore ought not to come with a judgment forestalled. "And to the end that the trial may be more indifferent, seeing that the safety of the prisoner consisteth in the indifferency of the court, the Judges ought not to deliver their opinions beforehand of any criminal case which may come before them judicially." And thus he arrives at last at the conclusion, which the reviewer supposes him to have maintained in 1614, as a principle then recognized and established. That it was not so, I have already satisfied you; and if any further proof had been needed, we might have found it in the very next sentence. Had Coke been content to rest upon the reason of the case, I should have had no more to say, except that the doctrines of to-day are not to be taken as descriptions of the practice of twenty years ago. But in law reason is nothing without precedent. For a precedent accordingly he seeks. Now had the principle been, as we are told it was, already recognized and familiar; had the attempt to forestall a Judge's opinion "upon a case put and proofs urged on one side in the absence of the party accused," been an *innovation* in the year 1614; a thing "of new and dangerous tendency, and not according to the customs of the realm;"—surely Coke, who had been Attorney-General from 1594 to 1606, Chief-Justice of the King's Bench from 1613 to 1616, and an active Privy Councillor, with only a year's intermission, from 1613 to 1620,—whose whole life had been spent in the search and study of records, authorities and year-books,—could not have been much at a loss for a precedent. If

it had not been the custom to consult Judges out of court, he must have known it; if Judges when so consulted had ever, upon that or any other ground, refused to answer, he must have known that also; if any judicial decision had been pronounced, or any eminent author had given an opinion to that effect, Coke was the man to quote it. Yet he is obliged to go back as far as the first year of Henry VII. (1486) before he can find a case for his purpose. "We read (he proceeds) that in the case of Humphrey Stafford, that arch-traitor, Hussey, Chief-Justice, besought King Henry VII. that he would not desire to know their opinions beforehand for Humphrey Stafford, for they thought it would come before them in the King's Bench judicially, and then they would do that which of right they ought; and the King accepted of it." This certainly sounds like an instance in point, as far as it goes. And yet I find upon examination that it is not really so. I find that in the case of Humphrey Stafford it was not a *private* opinion that was asked, but a public one in court, the prisoner being absent; and that the occasion was very peculiar. Humphrey Stafford had been formally attainted by parliament, but had taken sanctuary at Colchester, where he could not be touched. Afterwards he left that sanctuary to join Lord Lovel's rebellion, and (upon its dispersion) again took sanctuary at Colnham, a village near Abingdon. Upon this a question arose as to the extent of the privileges of this new sanctuary, and whether it was a sufficient protection for traitors; a point of law which (if I collect the matter rightly from Luder's statement, vol. i. pp. 147, 164) the King wished to have settled before he meddled with it. For this purpose,—that is, to decide upon the privileges of the sanctuary,—the Judges were assembled in the Court of Exchequer. But as it was precisely the same question which, if the prisoner were brought up for judgment, would come before them judicially in the King's Bench—(for Stafford being already attainted could have no other plea, except the privileges of the sanctuary)—the Chief-Justice saw that a public and formal decision upon

it would be equivalent to a prejudication of the case in the absence of the prisoner; and upon that ground prayed to be spared. If this be all, therefore, it cannot be inferred from it that he would have objected to give an opinion *privately* to the King; which (for anything that appears) he may actually have done. And this is the point in question.

Suppose, however, it were an instance in point. Still it appears to have been the only instance Coke knew of. It was then 150 years old, and I do not hear that it had ever been quoted before. Grant it to have been an example worthy of being followed, and bringing in a new custom. The question is, *had* it been followed? From the silence of Coke, who was more likely to know than any man, I presume it had not; and therefore that it was an exception, which, if it prove anything with regard to the practice, proves that the practice both before and after had been different,—as I have no doubt, if the examinations and consultations preparatory to the more important state trials were examined, would abundantly appear.

A.

That task I think you may fairly leave to the objectors. It is clear enough that the reviewer's opinion is built upon nothing. And your argument may be considered decisive, not only as against him, but as in favour of your own assertion, that a private conference between the law-officers and the Judges, even in a capital case which they were afterwards to try, was not then either new or unusual. I agree, therefore, that in that respect there is no colour for saying that Bacon was behind his age; however justly he may be reproached for not being before it.

B.

Well, that is something. But on this point too I have a word to say. Bacon, you think, ought to have been before his age. I agree that he ought, in his ideas and aspirations. But the question is, how far before his age he

ought to have insisted on *going;* and whether he ought to have parted company with his age whenever it would not go his way? I must again remind you that he was only Attorney-General. He was neither a Judge nor a Privy Councillor. It was not for him to determine what the law was, or what it ought to be. Suppose him to have thought the practice of consulting the Judges ever so bad, how could he have stopped it? Had he expostulated with the King for directing him to ask their opinions, the King would have said, "That is my affair; I am responsible for that." Had he suggested that the Judges ought not to answer, the King would have said, "That is their affair; let them speak for themselves." And what could he have replied? If every subordinate functionary who thinks himself wiser than his superiors should refuse to execute instructions which he does not approve, how could business be carried on?

A.

I do not mean that he should have fallen out with his age upon any indifferent or ordinary occasion, when no great principle was at stake. But to "tamper with a Judge in order to procure a capital conviction," involves so gross a violation of the essential principles of justice, that no man who saw the iniquity could be justified in lending a hand, even though he were but a subordinate functionary.

B.

"*Tampering* with a Judge *in order to procure* a capital conviction" is one of the reviewer's strong expressions against which you must be upon your guard. It carries in it a latent assumption of many things not to be assumed without proof. People talk as if there could be no object in asking a Judge's opinion upon a point of law, except to extort an opinion contrary to law. Why might not a King who was anxious to govern by law consult the Judges (being the highest authorities) in order to know what the law was? This was certainly the professed object of these consultations; why not the real one? My henroost is

robbed. I have reason to suspect a certain person to be the thief, but am doubtful whether the evidence is sufficient. I state the case to a neighbouring magistrate, and ask whether the man can be convicted upon such evidence. Here I am in fact asking the opinion of a Judge beforehand upon a case which may come before him judicially, and (considering the general villainy of mankind, and their proneness to suspect villainy where it is not) it may be that I do wrong. But am I therefore to be accused of *meaning* to do wrong? Surely not. I mean only to assure myself, before I do anything, that I am doing right; and the course I take is most natural and direct. And though it be true that in a world of scoundrels such a practice may lead to abuses and suggest suspicions, yet you may depend upon it that such a reflexion will not occur the most readily to the best man. The classes that rob henroosts will do very wisely in objecting to the practice, and just men who own henroosts will allow the jealousy to be reasonable and abstain from it. But I have myself heard such a consultation pass between two gentlemen, neither of whom had any object but to clear the path of justice, or dreamed that he was doing anything that could bear any other construction; and I must confess that no such thought would have occurred to myself, but for the analogy it presented to the case we are speaking of. It is not natural for an honest man to wish his own hands tied for fear he should misuse them. A sober man can trust himself with the keys of the cellar. A master of a house does not think it necessary to settle an annuity upon his steward and secure him his place for life, that he may stand as an indifferent judge between himself and the other servants. If the law cannot trust him to be a judge in cases where he is also a party, let the law bind him: he is not expected to distrust himself. In like manner a King does not think it necessary to make his Judges independent of his own authority for fear he should himself abuse it.

It is true that I—I, the people of England, who put no trust in princes—am for tying them up on all sides. Because

I distrust the Queen and her ministers, I rejoice that the Judges are independent; because I distrust the Judges, I rejoice that they are not allowed to hear causes out of court, and that juries are independent of them; because I distrust juries as well as Judges, I submit to any injustice rather than seek a remedy in court. But I do not blame either kings, or ministers, or judges, or juries, for retaining and using such powers as they *are* trusted with, so long as they are permitted and so long as they do not abuse them. Why then should I blame King James for using that authority over the Judges with which the constitution then entrusted him, so long as he meant to use it for good? or why blame his councillors for supporting him, so long as they believed the authority to be constitutional, and that he was not using it for ill? That both he and they did believe this, I am persuaded. I have little doubt that if James himself had been asked for a proof of that scrupulous regard to justice, upon which we know he prided himself, he would have appealed in the very first instance to these very consultations with the Judges which are now produced to prove the contrary. He would have said that he never directed a criminal prosecution without first ascertaining upon the best authority that it was clearly according to law. And when Bacon, only two months after these very consultations had taken place, was setting forth, *ad populum*, in open court, the *merits* of his government, did he avoid the topic? On the contrary, he placed it in the very front of his panegyric.

"For maintaining the laws (he said) which is the hedge and fence about the liberty of the subject, I may truly affirm that it was never in better repair. He doth concur with the votes of the nobles, *Nolumus leges Angliæ mutare.* He is an enemy of innovation. Neither doth the universality of his own knowledge carry him to neglect or pass over the very forms of the laws of the land. Neither was there ever King, I am persuaded, that did so oft consult with his judges,—as my Lords that sit here know well. The judges are a kind of council of the King's by oath and ancient institution; but *he useth them so indeed:* he confers regularly with them upon their return from their

visitations and circuits; he gives them liberty both to inform him and to debate matters with him; and in the fall and conclusion commonly relies upon their opinions."

A.

I do not think you have any right to quote an Attorney-General's panegyric as historical evidence. If you will not allow that Bacon was an unscrupulous flatterer, you should at least remember that he was on this occasion a professed advocate.

B.

It was not from the panegyric that I meant you to draw any inference, but from the choice of the topic. The consultations with the Judges in Peacham's case were no secret. They were at that time fresh in talk, and the popular sympathy was with Coke. If the general practice of consulting with Judges had been regarded with jealousy, as an abuse and an innovation, it would have been a dangerous subject to touch upon at such a time. Bacon would have avoided it, as he does avoid all allusion to another topic (otherwise much to his purpose)—the King's lenity to the Papists. Had he, in speaking of the mercy and benevolence of the government, put prominently forward the fact that the laws against the Roman Catholics were never so slackly administered, I should certainly have inferred that lenity towards that party was not unpopular. It was not that he wanted matter. On another occasion, when his object was to justify an exceptional act of severity, he could enlarge upon it eloquently enough, as he did in his charge against John Owen; upon whose case (you may remember) the Judges had been consulted at the same time with Peacham's.

A.

I do not quite see your drift. How did he treat it?

B.

He cited it as the most conspicuous proof of the King's

clemency. I may as well read you the passage, as it comes from a fuller copy than the published one, and is not in print. And it is one of the best specimens I have met with of his style of speaking.

"For the King's clemency, I must say it, and it is a thing notorious, that the part or party which have captivated themselves to the see of Rome (which is the fountain of this evil), I mean the Papists, do receive and enjoy an exceeding great proportion of his Majesty's mercy. 'Tis their tenure, I can tell them; they hold by King James's mercy. Certainly there hath not wanted matter to irritate him to a just execution of his laws, even in the points capital. What shall we think or say of the Powder-Treason? whereby the King and kingdom (the representative body or heart of it) should have been at once, as by a particular dooms-day, destroyed by fire. This alone had been sufficient to have turned judgment into fury. Let us go from powder-treason to paper-treason. What shall we say of that wicked and monstrous libel of Balaam's ass? that threatens the King in express words, that in that he was delivered from the Powder-Treason he was not preserved, but reserved for a greater judgment; that hath declared him (but it is but by the braying of that ass) to be Antichrist. . . . These blasphemies, if they had light upon some King, he would have expiated and washed his name, not with water but with blood. Let us go on to that which falls under every man's observation and discourse, which is the growth of the Papists. They grow in number, and they grow in boldness and presumption; massing in every corner; the prisons have been made as oratories and chantries; whole streets of Papists (as I hear) and whole tracts and territories of them in some counties of this kingdom; the consistories here of priests cannot pass from London to Wisbeach, but they must send forth their cartels and challenges to the University. These things likewise might make a King conceive that the swellings and tumours of that party may at the last make a dangerous breach, if they be not stopped and beaten back. Lastly, the very doctrines themselves of the Papists stand not at a stay, but mount and swell up still more to strangle and suffocate the authority of Princes. The books of Juannes Mariana, of Suares, of Coimbra, of Dominicus Bannes, of Sinanca and the rest; they are of a new stamp; they are as a poison often distilled and sublimate. These books no doubt come to the King's hands; he reads them; in his great wisdom

he seeth whereto they tend, namely, to sour the whole lump of all Papists in their loyalty, and to make kingdoms the Pope's footstool, or perhaps to make *duo luminaria magna*,—the Pope and the King of Spain. This likewise might incite some King to think this evil incurable, and therefore that lenity is not the way. Nevertheless we see the King, out of his great magnanimity and clemency (to be admired), observes still Cæsar's rule, *Nil malo quam eos similes esse sui et me mei*,—He remains still like himself, and leaves others to be like themselves. He rather bears the sword than draws it. What swarms of priests here be (which are so many pioneers to undermine the State), how many receivers of them, no man doubts; and yet, notwithstanding, the edge of the law is not turned against them; but they have their portion in the King's mercy, and not in his justice; insomuch as I may say, (as I have said of late upon just occasion,) that I have served Attorney and Solicitor eight years, and yet this is the first evidence I ever gave against a traitor. A strange thing,—bloody opinions, bloody doctrines, bloody examples, and yet the government scarce sprinkled with the blood of any offenders of this nature. This clemency of his Majesty, as it is to be magnified, so it may well show them that the proceeding with this offender at this time is, as it were, excepted out of the general course of his Majesty's mercy."

You see what a fruitful topic he had here for panegyric. Why did he avoid it on the former occasion, when he was setting forth the merits of the King's government against St. John's libel? Because he knew that those persons who sympathized with St. John would consider lenity to Papists a fault, and not a merit. Therefore, though he alludes generally to the clemency of the government, he does not mention the word Papist. And in like manner, no doubt, had the practice of consulting with the Judges been popularly regarded as a "tampering" with them in order to pervert the law, he would have avoided all allusion to it in setting forth *ad populum* the King's merits as a maintainer of the law. Far therefore from allowing you to assume without proof, that to consult was to tamper, I am half inclined to require you to accept this as a proof that it was not; as a proof that the practice was intended by the King, furthered by Bacon, and approved by the public, as a concession to

the authority of the Bench, and a new security for the people against injustice.

I will not, however, insist upon so large an admission as that. I only require you not to assume that it involved (as you say) "a violation of the essential principles of justice," until you can show something in the carriage of it which indicates such an intention or such an effect.

A.

That seems reasonable; but I am waiting to hear the story from you. My impression of it is taken from Macaulay, for as yet I have heard it only from him.

B.

True: and I have kept you waiting longer than perhaps I need have done in so clear a case. But our modern historians and historical essayists are so possessed with this misconception, that, unless it be removed once for all, it will rise up against us at every turn. And it all comes of the perverse habit of reading history backwards, and treating a man who has got only half-way forward on his journey as if he had gone half-way back. For if you consider the origin and nature of the institution of Judges in a monarchy, and the laws which govern all social developments, you will see that it could hardly by any combination of accidents have arrived at its present condition, without passing through a state in which the relation between the Crown and the Judges stood as it did in James's time; that is, in which it was not only the practice for the King to consult and debate with them, but in which that practice was a popular concession, a recognition of their growing independence, a submission to their authority.

At first the King himself was Judge, in his own causes as well as others. As the work grew too much for one man, he appointed deputies (*i.e.* Judges) to do it for him; and these were strictly his officers, and belonged to his household. As the subjects began to complain of injustice, parliaments to feel their strength, the powers of the Crown

to be defined and limited by statutes, and interests to clash, —the Judges were looked to as umpires. To secure the impartial discharge of their office, one check after another was devised. When it was found that arbitrary kings overruled them by authority, a remedy was provided by swearing them to judge according to law in spite of authoritative interference; and thus, in point of *duty*, they were made independent of the Crown. As their position in this respect began to be felt by themselves and recognised by others, they grew bold in the execution of their duty; and thus their authority came into collision with the authority of the King. And though he had still a check upon them, because he might still remove them at pleasure, yet it was dangerous to use such a power without just cause. And then he began to consult them privately; not merely for their advice when he was doubtful how to proceed, but also to avoid the scandal of public disagreement. In doubtful and difficult cases he was anxious to know their opinions, before he committed himself by any decisive step. And this was the period when causes that were to come on for trial, were submitted to the Judges for their opinion beforehand,—not to be proceeded in without their sanction. As time went on, it was found that this practice likewise led to abuses; for thus the Judge was pledged to an opinion upon an *ex parte* statement; therefore could not so well be indifferent, still less get credit for indifference, when the case came before him in court. To provide against that, all private consultations were forbidden; it was made the duty of the Judge to know nothing of the cause before him, except what he heard in open court. Still though his judgment was not bespoken, it was liable to be biassed, by the fear that if offensive to the King, it might lose him his place. To avoid this, we come lastly to the regulation by which he holds his office and salary during good behaviour. This is the last step, which completes the independence of the Bench. But it was not attained till after the Revolution.

Mind, I am not pretending to give you a historical

account of the institution of the Judges as it actually grew in England. I do not know the exact period at which the successive changes took place, nor the immediate cause which led to them. Nor will I answer even for the precise order in which they came. Accidents of many kinds might hurry the progress, or delay it, or derange it. I only mean to say that, like everything else in England, it must have grown by degrees; that the relation of the Crown to the Judges must have varied as its relation to the people varied; that the very same practice which a few years later would have been a step backwards towards despotism and an actual invasion of the constitution, was in its own time a step forwards towards liberty, and the concession of a new right to the people; and that James's practice of consulting and debating with his Judges upon points of constitutional law, if an innovation at all, was a popular invention, tending to establish and enlarge the judicial authority, not to confine it.

A.

Very well; I am ready to admit all this as to the practice of consulting the judges in a body. And I suppose you will admit in return that the device of keeping the Judges apart and taking their opinions separately was an innovation the wrong way. *That* must have been intended to break their union and weaken their authority, on the *divide et impera* principle.

B.

Say *tended* to break their union, and I agree. I admit that it was an innovation; and though I believe the object of it was not to overbear them and elicit a false opinion, but to free them from an overbearing influence the other way and so elicit a genuine one; yet I will not deny that the tendency of the practice, had it become regular, would probably have been to weaken their authority as a body, and so retard the process by which they were growing independent. I do not think that it can be called unconstitu-

tional, as the constitution then was; and I am persuaded that it was not meant to pervert justice; but I do think it was impolitic, and might in its remoter consequences have been injurious; and therefore I am glad that no arbitrary means were used to enforce it, but that after that one experiment it was allowed to drop.

We have now cleared the ground; and I am ready to tell the story. When that is done we will discuss the question as it affects Bacon.

A.

And I am ready to listen.

B.

You must not let these long discussions about the constitution in general make you forget the particular crisis of affairs about which we had so many long discussions before. The cases of Oliver St. John, of Peacham, of Owen, and of Talbot, which all occurred about the same time, were all symptoms of the same general disease, breaking out in different parts and in different ways, but all due to one fundamental disorder,—a government struggling with want and difficulty, and at variance with the representative body of the people at a time when neither could overrule, but each could embarrass, the other. They say that rogues thrive when good men fall out; and when the government is divided against itself, all forms of disaffection to government grow bold and dangerous. The violent breach between the King and the last parliament was the signal for zealots of all kinds,—Republican, Puritan, and Papist,—to strike a blow for their several causes. And as words come before blows, they broke out first into libellous, seditious, or treasonable speeches,—"preludes of seditions to come," according to Bacon, "no less than relics of seditions past."

Peacham appears to have been a Puritan preacher; and you are to remember that in those times sermons performed the part which leading articles do now. No continuous narrative of the case has come down to us, nor any copy

of the obnoxious sermon. The nature of his offence therefore we can only gather from a few incidental allusions. It would seem that he was first called in question upon a different matter,—a petition to parliament, which had been forwarded to some popular members. This (though it turned out upon inquiry not to be of a nature to justify a prosecution) led to the searching of his house; where were discovered several loose papers containing charges against the King and the officers of state, and also a sermon in which all those charges were collected and set forth, with text and prayer prefixed, as if ready to be preached; the whole forming a violent invective against the iniquities of the government, coupled it would seem with warnings (whether imprecatory or deprecatory I do not know) of judgment to come, in the shape of sudden death to the King, massacre of his officers, or risings of the people. Of the spirit in which it was written and the impression it was calculated to produce, we have unfortunately no better means of judging than by its effect upon the King; from which however (making due abatement for the infirmities of the royal temper) we may gather something.

"Had he compiled a sermon (the King writes) upon any other ground, or stuffed the bulk of it with any other matter, and only powdered it here and there with some passages of reprehension of the King; or had he never so bitterly railed against the King, and upbraided him with any two or three, though monstrous, vices; it might have been someway excusable; or yet had he spewed forth all the venom that is in this libel of his in a railing speech, either in drunkenness or upon the occasion of any sudden passion or discontentment, it might likewise have been excused in some sort. But upon the one part to heap up all the injuries that the hearts of men or malice of the devil can invent against the King, to disable him utterly not to be a King, not to be a Christian, not to be a man or a reasonable creature, not worthy of breath here or salvation hereafter; and upon the other part not to do this hastily or rashly, but after long premeditation, first having made collections in scattered papers, and then reduced them to a method, in a formal treatise, a text chosen for the purpose, a prayer premitted,

to apply all his wits to bring out of that text what he could *in malam partem* against the King,—this I say is a plain proof," and so on.

From this passage, which occurs in an argument addressed by the King to the Council,—coupled with the popular impression produced afterwards by the trial, viz. that the "offence was very foul and scandalous," *—we may perhaps infer that the sermon in question was at least an unusually strong specimen of licentious writing against the government; while the acquaintance it showed or pretended with the proceedings of the state which were not public,† suggested a suspicion that there must have been aiders and abettors in higher quarters.

The first object therefore was to find some clue for the discovery of these. With this view Peacham was examined (according to the uniform practice in such cases) upon interrogatories, before the Archbishop of Canterbury and the other members of the Privy Council; but was considered "not to deal clearly;"—whereupon (whether upon their own suggestion or by the King's command does not appear) they issued the following warrant (18th Jan. 1614–15):—

"Whereas Edmund Peacham, now prisoner in the Tower, stands charged with the writing of a book or pamphlet containing matter treasonable (as is conceived), and being examined thereupon refuseth to declare the truth in those points whereof he hath been interrogated; Forasmuch as the same doth concern his Majesty's sacred person and government, and doth highly concern his service to have many things yet discovered touching the said book and the author thereof, wherein Peacham dealeth not so clearly as becometh an honest and loyal subject: These shall therefore be in his Majesty's name to will and require you and every of you to repair with what convenient diligence you may unto the Tower, and there to call before you the said Peacham, and to examine him strictly upon such interrogatories concerning the said book as you shall think fit and necessary for the manifestation of the truth; and if you find him obstinate or perverse, and not otherwise willing to tell the truth, then

* See Mr. Chamberlain's Letter, quoted further on.

† See the interrogatories upon which Peacham was examined.

put him to the manacles, as you shall see occasion; for which this shall be to you and every of you sufficient warrant. From Whitehall, this 18th of January, 1614."

This warrant was signed by the Archbishop of Canterbury; the Earl of Suffolk (Lord Treasurer); the Duke of Lenox (Lord Steward); the Earl of Worcester (Lord Privy Seal); Lord Stanhope; Sir Ralph Winwood (Principal Secretary of State); Sir Fulke Greville (Chancellor of the Exchequer); and Sir Julius Cæsar (Master of the Rolls).

The Lord Chancellor (Egerton) was at the time ill and unable to attend. Sir Edward Coke, being a common-law Judge, did not sign it; but there is no reason to suppose that he suggested any objection: indeed we may be pretty sure he did not, for if he had it would have been heard of.

The warrant was directed to two of themselves (Sir R. Winwood and Sir Julius Cæsar), joined with the Attorney and Solicitor-General, two King's Serjeants, the Lieutenant of the Tower, and the Clerk of the Council. And this, so far as we know, is the first appearance of Bacon in the business.

Next day these commissioners proceeded to execute their prescribed duty. A series of twelve interrogatories having been prepared (apparently by Sir R. Winwood,—for the report is in his handwriting, and his name stands first among the signatures), Peacham was examined upon them. Finding him "obstinate" (as they considered), they applied the manacles (but what the manacles were nobody seems to know). He was examined (as everybody has heard) "before torture, in torture, between torture, and after torture; but nothing could be drawn from him; he still persisting in his obstinate and insensible denials and former answers."

During all this, Bacon it is true was *present*. But what *part* he took,—whether that of persuader or of dissuader;—whether he "went to listen to the yells of Peacham," as the reviewer feelingly suggests, or to intercede for the purpose of preventing or moderating the infliction;—and with what degree of severity and judgment the torture was actually applied;—we have no means whatever of knowing. The

result was reported to the King, not by Bacon, but by Winwood. The one thing we do (by accident) know, is that Bacon was *not* what any reader of this review would naturally conclude that he *was*, the "principal examiner;" and that he professed regret that they were "driven to make their way through questions."* And indeed if we had not the independent evidence of his own express admission that he did not take a leading part in the examination, it would not have been natural to suppose that he did. That part would naturally be taken by Winwood himself; being the man of highest official rank present, and senior Privy Councillor; having assisted at the former examination; and being doubly concerned in the present proceeding, both as one of the Council who had directed and as one of the commissioners who were to execute it: a harsh man too, with abundant confidence in himself, and not at all disposed to look up to Bacon.

But there was another circumstance which would have prevented Bacon from taking the lead. It appears from this correspondence, incidentally but I think conclusively, that he had no hope of any satisfactory result from his examination, and that the entire proceeding was against his advice. He appears to have foreseen from the first, having had old experience in such cases, that the investigation could not be helped in this way; for that the prisoner would only give such answers or make such confessions as might lead to delay, knowing that, if it came to the worst, he could retract everything that made against him on the plea that it had been extorted by fear or pain: so that if the case were allowed to rest upon his confessions, it would break down when it came into court. It appears moreover that he had told the King as much. But as the Council were of another opinion, and took the course which he disapproved, he was obliged to guard against the issue which he apprehended in another way; which was this: when the attempt to discover more matter by examining the prisoner had been persevered in for a month or six weeks (in which

* Bacon to the King, Jan. 21 and 27, 1614-15.

however torture was no more used,—nor did Bacon take any part) and had brought forth nothing of moment; and when everything was ready, or made to appear ready, for the trial to come on immediately; Bacon, at his own instance (the only proceeding in the matter which was, so far as I can find, at his own instance), went with others of the Learned Counsel to the Tower, to make a final examination; upon which, as he had anticipated, Peacham, being now freed from the fear of torture, *denied everything which he had formerly confessed.* It is in reporting this result to the King, that the act which I have just mentioned comes out; incidentally, as I said; but also, as I think, conclusively; of which however you shall judge for yourself. After observing that the denial did not affect the proof of the fact—for that rested upon independent evidence—he adds, "He never deceived *me:* for when *others* had hopes of *discovery,* and thought time well spent that way, *I told your Majesty* '*pereuntibus mille figuræ,*' and that he did but now turn himself into divers shapes to save or delay his punishment." This, you will observe, is written to the King himself, reminding him of something which had passed between them within the last two months; and it seems to appeal to the King's own knowledge that the proceedings with a view to *discovery,*—that is, the examinations, with or without torture, by which it was proposed to elicit confessions from the prisoner,—had been instituted not only at the suggestion of *others,* but against the suggestion of Bacon himself. And this supposition squares perfectly with the rest of the story; especially with the fact that Bacon took no forward part in those proceedings, and that the only one in which he did take a forward part was adopted for a purpose exactly opposite; namely, to clear away all that had been done before. Can you suggest any more probable construction?

A.

No. It seems consistent with all we know; if we know no more.

B.

As far as the *torturing* of Peacham is concerned, at least as far as Bacon had anything to do with it, I believe I have told you everything that is known; and no more than the reviewer might have known, if he had read the correspondence about which he was writing.

A.

Then the charge against Bacon reduces itself at the very most to this,—that being Attorney-General he did not refuse to be present at the examination of a prisoner with torture; that examination being directed and warranted, according to the form then usual, by the Privy Council; three of their own body being on the commission; and he in no way responsible, since he neither had advised nor could have prevented it.

B.

And at which he *may*, for anything we know to the contrary, have interfered to dissuade or to moderate the infliction. Allow me the same licence which the reviewer uses when he says that Peacham "while undergoing the horrible infliction was examined *by Bacon*," and that "Bacon went to the Tower to listen to the yells of Peacham" —I say, allow me the same licence for a better purpose, and I will paint Bacon as a man consenting himself to suffer the torture of witnessing such an infliction, only in the hope of being able to mitigate the sufferings of the prisoner. I do not say so, because I do not know whether it was so; but I am sure it is quite as likely.

A.

It is a matter of taste, then. And we may say without offence that the reviewer's taste is singular.

Well—I think you have broken the neck of this charge too: which I admit is more than I expected. Now let me hear about the tampering with the Judges.

B.

That will be soon despatched, after the clearance we have already made.

You must first consider that this part of the proceedings was in no way connected with the torturing. The points which it was hoped to ascertain by help of the manacles, formed no part of the case as it was laid before the Judges. The question which they had to decide was, whether the known and admitted facts about which there was no dispute came within the statute of treason. There was no doubt about the tenor of the sermon, for they had the words before them; there was no doubt that Peacham was the author, for it was all in his own handwriting,—both the finished composition and the rough notes out of which it was composed. The question was first, whether the words if published would have amounted to treason; secondly, whether the composition only, with the probable intention of preaching (as it might be gathered from the circumstances), amounted to an act of treason. Bacon thought it did, and had his records and authorities to produce. But what would the *Judges* think?

To ascertain that, James resolves (as I told you) to know what each of them would say for himself; and wrote to the Council "directing and commanding" that steps should be taken for that purpose. If this was to be done, it was of course Bacon's business, as Attorney-General, to manage it. Had he thought that it was contrary to law, or that it intended or involved any perversion of justice, it was no doubt his duty to remonstrate, and if necessary to refuse his aid; for here he was called on to take a leading part. But he did *not* think so. That it was *impolitic*, he may or may not have thought; that, if brought into ordinary use, it might at some future time come to be used as an instrument of injustice, he may or may not have foreseen. But he knew that it was not to be so used then. Whether he approved of the King's device or not, he knew that his object was to obtain from the several

Judges an unbiassed opinion; he knew why it was that, unless each was left to answer for himself, an unbiassed opinion could not be counted on; he knew (or if I may not say *knew*, he was at least deeply persuaded) that the bias to which their collective opinion was subject was not necessarily in favour of justice, and might run directly against the authority of government, the preservation of which was, as things then stood, of vital importance to the state. "Except these stay in the ship (he said), ye cannot be safe." It was no time for the captain and the master to be quarrelling.

Under these circumstances, can you confidently say that Bacon,—a subordinate officer, whose duty was to execute, not to advise, and who had no commission to dispute with the council-table,—that Bacon, being "directed and commanded" to take this course,—ought to have refused?

A.

That would depend partly upon the nature of the work he had to do. If it was anything which can be properly called "tampering" with the Judges, he might at least have begged to be excused.

B.

True; "tampering," like "garbling," is a word which carries in it a volume of indefinite presumptions.

What was it then that he had to do? He had to make arrangements for these private and separate conferences with the Judges. Each of the Judges of the King's Bench was to be conferred with by one of the Learned Counsel; he was to be attended privately, separately, and suddenly, before he could be "tampered with" by any one else; the grounds of the indictment, with the records and precedents upon which it was justified, were to be laid before him; and his opinion was to be asked whether such an indictment would be good and sufficient in law;—whether, in short, it was a case fit to take into court;—a question which (if Coke's own doctrine were admitted that "the testimonies

and proofs of the offence ought to be so clear and manifest that there *can* be no defence to it") it was necessary for the essential purposes of justice to ascertain beforehand. Bacon himself undertook to deal with Coke. No intimidation was used; no promises, no threats; no time limited for the answer; no form of answer prescribed; the only thing insisted on was that each should answer for himself, without consulting the others, the same question which, had they been assembled in conference, would have been entertained and answered by them all as a matter of course.

To what then did the innovation in fact amount? Only to a denial of the right of the Judges to be treated as a *party* in the state, with a collective conscience. James insisted that each should in this case act upon his private conscience and individual responsibility; a course which, however it might be objected to in a public proceeding as tending to damage the authority by betraying the divisions of the Bench, was by no means a bad one for getting at the *truth*. Juries, it is true, consult and answer in a body: but why?—because what is wanted is not the real opinion of each, but an apparent unanimity of all; for certainly if you wanted to know the real opinions of twelve men upon the point of guilty or not guilty, you had much better distribute them in twelve separate cells and let each give his own answer in his own time, than shut them up together without food till they agree in the same answer.

A.

That may be. But assuming that the King did want the real opinions of the Judges, what did he mean to do with them when he had them? Suppose they had all said that the case did *not* amount to treason, what would he have done?

B.

No doubt he would have dropped the prosecution. As it was, because "*some of them doubted* whether it were treason," he refrained from carrying the sentence into effect.

A.

But why did he go on with the prosecution when he knew there was a doubt?

B.

When he gave the direction first, I do not suppose that he thought there could be any doubt. What with his hasty temper, and his ideas of the sanctity of his office, it is no wonder that he was angry. He began the prosecution for the same reason that the country magistrate prosecutes the poacher—he thought it a horrible offence. After he had so far committed himself, and the matter had taken wind, there was a better reason for going on with it. The dropping of it would have been a great encouragement to the disaffected party; for it would have immediately gone abroad that people might indulge themselves in the *composition* of libels against the state without any risk. Supposing Bacon and the majority of the Judges right as to the law,—to go on with the trial and then to refrain from executing the sentence was probably the best course that could have been adopted.

A.

Then you do not suppose that there was any unfairness in the trial?

B.

I cannot hear of any. Peacham was tried in the county where the offence was committed; which I believe was regular. The jury seems to have been of better quality than ordinary; for we read that seven knights were taken from the Bench to be on it,—and it is not hinted that they were chosen for any supposed bias against the prisoner. Nor does the popular feeling, though the popular sympathy should naturally have been with the prisoner, appear to have been against the verdict. "He defended himself (says Mr. Chamberlain, speaking from report) very simply, but

obstinately and doggedly enough. But his offence was so foul and scandalous that he was condemned of high-treason; yet not hitherto executed; nor perhaps shall be if he have the grace to submit himself and show some remorse." Of the course of the trial we know nothing. That the suspension of execution arose from the "obvious futility" of the charges and the "shame" of the government, is the reviewer's own invention. The only report of the case which bears any authority attributes it to the fact that "some of the Judges doubted whether it were treason."

Of course I do not deny that the law of treason, as then understood and practised, was very severe and liable to be made an instrument of great oppression. So were many other laws at that time and long afterwards; so are some of our laws at this day. But I do deny that it was the business of the *Attorney-General* either to alter the law or to interpret it. He was the retained advocate of the Crown; and his duty was to conduct the case on behalf of the Crown; to conduct it *according to law*, no doubt; but according to the law as it then was. And I confess, for my own part, I do not see how Bacon exceeded that duty.

A.

He need not have been so forward about it. He might have expostulated.

B.

No doubt he might. But are you sure that he could have done any good by expostulating? Nay, are you sure that he would have done no harm? View the case in the worst light. Suppose Bacon to have believed that the consultation with the Judges severally was a step backwards, and likely to be mischievous if drawn into precedent; who can now say what was the simplest, the readiest, the most effectual way of preventing it from becoming a precedent? The King, though open to reason, was not patient of contradiction. What if Bacon, knowing as he did all his *molles aditus ac tempora*, foresaw that an ineffectual opposition to

a measure upon which he was for the moment bent, would but have piqued and provoked him to insist, and thereby committed him to it irrevocably? What if he thought it best to give him way just then, and to take occasion to divert him when there was a chance of doing so with success? Such an occasion did in fact present itself within a week or two. Bacon did in fact so take advantage of it, and there was an end of the matter.

A.

You allude to the case of Owen.

B.

Yes. The King authorized him to use in that case the same course which he had commanded him to use in the other. Bacon upon his own responsibility adopted a different one; gave a reason which was accepted; and the plan of "auricular" conference with the Judges was never heard of again.

I do not say that this *was* his motive for acting as he did. I do not know whether it was or not. But it may have been.

A.

He did not say so himself?

B.

No; but what of that? He was not called on to say anything. His conduct in the affair was not found fault with for above a century after.

A.

Certainly we talk at random about these things, knowing so little as we do of the pros and cons. And in the case of an ordinary man, it would not seem at the worst any great offence. But one cannot treat Bacon as an ordinary man.

B.

Ordinary in what respect? of ordinary understanding?

A.

Of ordinary *character*, rather. The understanding is not so much in question.

B.

Well; but if you deny Bacon the excuses which you would allow to a man of ordinary character,—that is, of ordinary virtue,—you must adopt my view of his character, not Macaulay's. If that shows as a stain upon him which would not have been remarked in a man of ordinary virtue, it follows that his virtue was something above the ordinary. It follows also that where our ignorance of the facts leaves room for favourable presumptions, he is entitled to the benefit of them.

A.

Stay, stay. I do not know that. And yet— Yes, I allow that whatever leads us to *expect* well of a man in a future case should likewise lead us to *presume* well of him in a doubtful case. And the case in question is doubtful, inasmuch as the motives you suggest *may* have influenced him.

B.

Well, then—look back at this formidable charge as it now stands, and say to what extent it damages him. He is now in his fifty-fourth year. Up to this time you admit that no serious charge has been substantiated against him; and that, so far as we know, he has in all critical cases taken a constitutional part. How far does the part he took in this matter of torturing and tampering alter the case?

A.

Why, since it seems to be certain that he did not

originate, probable that he could not have prevented, either; not improbable that he disapproved both, and possible that the course he took was the likeliest to qualify or obviate the mischief;—I suppose I must say, not much.

B.

Assuming then that he was sincerely attached to the cause of the government,—sincerely persuaded that the only chance for the nation of a peaceful progress through order to liberty lay in the preservation of its due predominance, and that for the preservation of that due predominance both an internal strength of union and an outward aspect of harmony among its various members was an essential condition;—assuming him in short to have been attached to the government in the same way in which a modern politician is attached to his political party, believing that it contains the hopes of the country;—do you think that the part he had to take in this instance was of such a nature that he ought rather to have broken with the government than have taken it? For that was really the question he had to consider. In our own times, there is probably no political party which has not taken some step that some of its members disapproved; yet upon which if every member who disapproved had taken part against them, their total strength would have been materially impaired. Is it not possible to suppose that in the eyes of those dissentients the disuniting of the party may have seemed a worse thing *for the country* than the particular measure which was in question, and that they may therefore have thought it *right* to waive their objection?

A.

No doubt such cases must occur continually.

B.

Then why may not I suppose that Bacon thought it *right* (*i.e.* most conducive to the general good) on this occa-

sion rather to accept the part assigned to him than to withdraw his services from the general cause?

A.

I do not know.

B.

I *do* suppose he thought so.

A.

If so, he was not to blame. And even without supposing this, I am ready to admit that the blame, at worst, shrinks upon examination into a very small matter. On comparing the impression I had against him when we sat down this evening, with that I have now, I confess it seems very like an honourable acquittal upon the whole charge.

B.

Then we may as well rest here to-night. For these proceedings against Peacham he was only responsible inasmuch as he was not prepared to oppose them. To form a true estimate of his character and policy, we must inquire what he was prepared to *advise*. But that inquiry will yield matter for another evening.

EVENING THE FOURTEENTH.

B.

We left off, I think, with an acquittal of Bacon upon the Peacham case; at least with an admission that it gave no countenance to the reviewer's statement that he was then occupied in perverting the laws to the vilest purposes of tyranny. And I was to explain to you what he *was* at this time occupied in doing or endeavouring to do.

But if I remember rightly, I interrupted some general reflections which the reviewer was going to make upon it. We had better get rid of these first, though I suppose, the ground being removed, they will fall away of themselves as irrelevant.

A.

I suppose they will, but we may as well have them.

"Bacon far behind his age! Bacon far behind Sir Edward Coke! Bacon clinging to exploded abuses! Bacon withstanding the progress of improvement! Bacon struggling to push back the human mind! The words seem strange. They seem like a contradiction in terms. Yet the fact is even so; and the explanation may be readily found by any person who is not blinded by prejudice. Mr. Montagu cannot believe that so extraordinary a man as Bacon could be guilty of a bad action,—as if history were not made up of the bad actions of extraordinary men,—as if all the most noted destroyers and deceivers of our species, all the founders of arbitrary governments and false religions, had not been extraordinary men,—as if nine-

tenths of the calamities which have befallen the human race had any other origin than the union of high intelligence with low desires."

B.

Whether these observations apply to Mr. Montagu's argument or not, I do not know, and it is not worth while to inquire. I need hardly remind you that they have nothing to say to any argument of mine. It is not because Bacon was an *extraordinary* man that I find a difficulty in believing that he was withstanding the progress of improvement and struggling to push back the human mind; but because he was fifty-four years old, and had hitherto been constantly endeavouring to advance them; not that I find anything strange in the union of high intelligence with low desires, but that Bacon had been hitherto quite as remarkable for the loftiness of his desires as for the height of his intelligence. The greatness of the end to which he dedicated his abilities is in fact more certain even than the greatness of the abilities themselves. Whether he actually achieved any great things in the path he chose, is a question on which wise men differ. How far his talents fitted him for the achievement of great things in that path, is a question not beyond dispute. But that the things which he was hoping, purposing, and endeavouring to achieve, were really great and heroic, I think no man can doubt.

A.

Certainly, if the reviewer supposes that high intelligence united with low desires will produce an *Instauratio Magna*, he should go to school again But let us hear him out, while we are about it.

"Bacon knew this well. He has told us that there are persons, '*scientia tanquam angeli alati, cupiditatibus vero tanquam serpentes qui humi reptant.*' And it did not require his admirable sagacity and his extensive converse with mankind to make the discovery. Indeed, he had only to look within. The difference between the soaring angel and the creeping snake was but a type of the difference between Bacon the Philosopher and Bacon

the Attorney-General,—Bacon seeking for truth and Bacon seeking for the Seals."

B.

Stay. If the reviewer means to quote Bacon as an authority by which to support his own paradox,—if he means to cite Bacon as believing that such a monster as he has painted is possible in nature,—I must call for the passage. I do not remember the rest of it, but I will bet ten to one that it does not mean that. That Bacon ever said that desires which are as the creeping snake can be associated in the same mind with a sincere love or a successful pursuit of *truth*, I must see before I believe. Does he say where the passage comes from?

A.

De Augmentis. Book 5, chapter 1.

B.

Then stay a moment and let us look at it.—I thought so.—"*Doctrina circa Intellectum (rex optime) atque illa altera circa Voluntatem hominis, in natalibus tanquam gemellæ sunt. Etenim illuminationis puritas et arbitrii libertas simul incœperunt, simul corruerunt. Neque datur in Universitate rerum tam intima sympathia quam illa Veri et Boni. Quo magis rubori fuerit viris doctis si scientia sint tanquam angeli alati, cupiditatibus vero tanquam serpentes qui humi reptant; circumgerentes animas instar speculi sane, sed menstruati.*"

Surely this means that the illumination of the Intellect is *incompatible* with corruption of the Will; that Truth and Goodness, as they were twins in their birth, so are they inseparable in nature; that the brightest intelligence will be but as a false mirror so long as the desires are low. A more unfortunate quotation, if it be meant as an appeal to authority, he could hardly have hit upon. That moral baseness may be allied with great intellectual gifts, Bacon no doubt knew; but if we may infer anything from this

passage, it is that, in his opinion, moral baseness cannot be allied with the love of Truth.

However, let this pass. The reviewer thinks differently from Bacon in many things, and in this among the rest. Go on.

A.

"Those who survey only one half of his character may speak of him with unmixed admiration or with unmixed contempt. But those only judge of him correctly who take in at one view Bacon in speculation and Bacon in action. They will have no difficulty in comprehending how one and the same man should have been far before his age and far behind it; in one line the boldest and most useful of innovators, and in another line the most obstinate champion of the foulest abuses."

B.

That may be. But that is not the difficulty with which we have to deal. The difficulty is to comprehend how one and the same man could be both selfish and unselfish; governed at the same time by two opposite principles, one urging him to sacrifice everything to his basest personal interests, the other to sacrifice all his personal interests to the service of generations in whose gains he could have no portion.

A.

Wait a moment.

"In his library all his rare powers were under the guidance of an honest ambition, of an enlarged philanthropy, of a sincere love of truth. There, no temptation drew him away from the right course. Thomas Aquinas could pay no fees. Duns Scotus could confer no peerages. The 'master of the sentences' had no rich reversions in his gift."

B.

Meaning that if they *had* had such things to offer, he would have stood by the schoolmen and abandoned the new philosophy. Another generous suggestion. But let it pass, and explain this. The hours which he spent in his

library *might* have been spent with those who had all these things to offer. Now if his library yielded neither fees, nor peerages, nor reversions,—and if he spent a great deal of time in his library,—we must suppose that fees, peerages, and reversions were not the things which occupied his soul. Had he indeed been studying, as many do, with a view merely to gain or glory; under the guidance of a *dis*honest ambition, of a narrow *philautia*, of a sincere love of *money;* then, it is true, I should see no more inconsistency in the case than the reviewer does. He would have been the same man in his library that the reviewer takes him to have been at court. He would have been a self-seeker in both characters. The justice of his literary and philosophical judgments would have proved nothing but that he could judge justly where he had no temptation to judge otherwise. But we know very well that his studies sprung from no such motives; looked for no such rewards. The reviewer himself does not dispute this. On the contrary, he tells us that his motives were "an honest ambition, an enlarged philanthropy, a sincere love of truth." Surely I may ask how, if his spirit was essentially base and selfish, he came by this honest ambition, this enlarged philanthropy, this sincere love of truth; under the impulse of which he gave away so large a portion of his life and thought and labour to objects from which a base and selfish spirit could derive no gratification whatever.

A.

Fame?

"Fame is the spur that the clear spirit doth raise—"

B.

Ay, the *clear* spirit. The desire of fame,—the only kind of fame which he could look to reap from those labours,—if an infirmity at all, is the infirmity, you know, of a *noble* mind. But even with this, as an infirmity, I do not think Bacon can be justly charged. Posthumous fame was a

necessary incident and attendant of the course he was pursuing, as it must be of all noble courses. The anticipation of it must no doubt have been a present possession, both grateful and cheering. Yet you cannot say that fame, even in that high sense, was the thing for which he was working. Had fame been his *end*, he could have made himself far sooner and far more famous, with half the trouble. I am persuaded that no man can give a tolerably consistent explanation of Bacon's philosophical life, without assuming that his moving principle was a sincere desire to do good. And though I do not mean to say that a man who is sincerely desirous of doing good may not often be tempted to do ill,—though I do not deny that he may be liable to fits of timidity, of self-indulgence, of baser passion, —yet I do deny that he can be a bad man, a man of motives and desires habitually base, selfish, and grovelling, —a creeping snake.

A.

Then you will deny that the reviewer paints Bacon truly in the next sentence.

"Far different was the situation of the great philosopher, when he came forth from his study and his laboratory to mingle with the crowd which filled the galleries of Whitehall. In all that crowd there was no man equally qualified to render great and lasting services to mankind. But in all that crowd there was not a heart more set on things which no man ought to suffer to be necessary to his happiness—"

B.

What, not *one*?

A.

"—on things which can often be obtained only by the sacrifice of integrity and honour. To be the leader of the human race in the career of improvement,—to found on the ruin of ancient intellectual dynasties a more prosperous and enduring empire, —to be revered to the latest ages as the most illustrious among

the benefactors of mankind,—all this was within his reach. But all this availed him nothing—"

B.

Nothing?

A.

"—while some quibbling special pleader was promoted before him to the Bench,—while some heavy country gentleman took precedence of him by virtue of a purchased coronet,—while some pander, happy in a fair wife, could obtain a more cordial salute from Buckingham,—while some buffoon, versed in all the latest scandal of the court, could draw a louder laugh from James."

B.

Unquestionably, I must deny the accuracy of that picture. And I must repeat my former question; why then did he stay so long in his laboratory? If he was indeed so jealous of the success of other men in these pursuits; if the prosecution of his favourite studies, if even the consciousness that the accomplishment of his vastest ends lay within his reach,—if this afforded him no consolation,—"availed him nothing,"—so long as he saw himself outstripped at court by quibblers, and country gentlemen, and panders, and buffoons;—why did he continue to spend his leisure in those studies? Why did he not apply himself to the winning of those honours without which he could not be happy? It was not because he had them already. Many lawyers had been advanced over his head. Many a younger and heavier man had worn a purchased coronet, while he was still a simple knight. Many a courtier had gained more influence over Buckingham and the King. If these were the things on which his heart was set, why did he not practise the arts which he saw others practise with success? Yet did he ever quibble, or offer money for a title, or pander, or talk court-scandal? What did he ever ask for but advancement in the direct line of his profession? What did he ever offer for it but ability and industry and willing service? It is tiresome

to answer, as it is loathsome to read, such trash; but, being smart, it makes its impression upon a reading public, that has not time to consider what it reads. If people could be induced to think about the matter, they would surely allow that if you want to know what a man's *heart* is set on, you must ask how he employs his spare time. And nothing is more certain than that Bacon's spare time was spent far away from all these vanities.

A.

No doubt the picture is exaggerated; and I am myself inclined to agree with you that there is no truth in it whatever,—not even the truth of caricature. At the same time I think you are pressing your argument too far. You must remember that man is not a consistent animal,—that he is often distracted between two masters. They say Seneca wished to stand well with Truth, and yet not ill with Nero. In like manner Bacon may have wished to be the regenerator of philosophy, and yet to be a great man at court; and the inconsistency you have pointed out may have been only the natural consequence of trying to be both.

B.

Only prove to me the fact of the inconsistency, and I will accept this as the most reasonable explanation of it. The case is not a common one, but I will not say that it is inconceivable. Though a man cannot serve both God and mammon, he may try to do it. But I say it is not so ordinary a case that you may assume it without proof: and what is the proof upon which Macaulay rests? What are the facts from which we are to infer that Bacon had two distinct souls,—one for his study and the other for Whitehall? the one inspiring him with "honest ambition, enlarged philanthropy, sincere love of truth;" the other making titles and court-favour so necessary to his happiness, that without them all else was good for nothing? The facts so far as I can discover are two. The first is, that being Attorney-General, whose duty it was to conduct state

prosecutions, and being expressly commanded by the King, who was solely responsible, to ascertain the opinion of the Judges upon a point of law (viz. whether certain acts amounted to treason)—he did not refuse to do it. The second is, that being directed to assist, along with seven other commissioners, in the examination of a prisoner, with authority to apply torture if the truth could not be got at otherwise,—such examination being warranted in the usual form by the Privy Council, and the legality of the practice in state prosecutions having never yet been called in question,—he did not refuse to be present at that examination. Because he did not throw up his office rather than do these two things, we are to believe that his highest ambition was promotion, a coronet, and court favour.

A.

It was not, I think, upon these two facts alone that Macaulay meant to rest the charge. He was thinking no doubt of Bacon's entire political career, in which he has (strangely enough) been able to see nothing but baseness upon baseness. If there were any truth in the rest, there would be no ground for a charge of exaggeration here.

You and I however, having upon the earlier charges distinctly acquitted Bacon, and not being clear that he was to blame even upon these last two, must of course reject this theory of the two souls as quite irrelevant to the case, and condemn the portrait as merely unlike,—not deserving even the name of a caricature.

But our review is going to enter upon a new subject. Therefore as you have shown to my satisfaction what Bacon was *not* doing all this time, tell me now what he *was* doing. For I do not find that the case of the kingdom is growing any better. These prosecutions may have checked certain dangerous and violent symptoms, but they could not reach the seat of the disease. The exchequer is still empty and in debt. The executive and the legislature are still at odds. The Benevolence has not yielded any relief (I conclude) at all adequate to the emergency; and as a demonstration of

harmony between King and people it appears to have failed; for these prosecutions must have told more in popular opinion as an evidence of discontent, than the contribution as an evidence of confidence and goodwill. The question "*what is to be done next?*" remains still unanswered, and is, to my thinking, as unanswerable as ever.

B.

Unhappily, even so. The problem was much the same in 1615 as it was in 1613; only still more complicated and difficult of solution; the distress of the government being greater, and the experiment of an appeal to parliament more precarious. Still it was from a parliament that the only effectual remedy could be looked for; and on the 27th of September 1615, the question of calling one was again by the King's direction brought under the consideration of the Council. Whether this was by Bacon's recommendation or not I cannot say; but I have been lucky enough to meet with a long letter of advice from him to the King upon the subject, which sufficiently explains what his private views were. It has no date, and therefore I cannot be sure whether it was written before the King referred the question to the Council (which was on the 24th of September 1615*), or after. It cannot however have been written later than the end of that month; and from its containing no allusion to the fact that the question was then or had been recently under the consideration of the Council, I should infer that it was written before. I have already quoted some parts of it; and as none of it has been printed, I will now read you the rest.

A.

The Inner Temple MS., I suppose.

B.

Yes. It is only a copy; but appears to be generally correct. And the authorship speaks for itself.

* See State Paper Office, A.D. 1615, f. 149.

"Concerning a parliament," (it begins)—"if I were to give opinion to a King whose distastes were stronger with him than his occasions, I confess I should be doubtful and reserved. But because his Majesty is a prince of so great judgment that can give every event his true cause, and that can collect upon things that formerly have not so well succeeded as well what to amend as what to avoid, I encourage myself that I may deliver mine opinion as well safely as freely;—intending when I speak of safety, of being saved in his Majesty's good conceit and favour; for other peril I esteem not.

"Whosoever therefore shall dissuade a parliament, cannot deny thus much,—that a parliament is the ancient and royal way of aid and provision for the King with treasure (for the word Supply and Supply of wants I am almost fallen out with).

"They will likewise grant that it is easier to create will than means; neither can they show any other means sufficient, but it is of a more slow and casual coming in and hath not conjoined with it the point of *honour and reputation*, which doubleth the rest; or rather surmounts it in many parts.

"But they will say the experience and success of the two last parliaments doth intimidate and astonish them to try the same means again, except that they had other foundations than they then had. Wherein on the other hand I do profess simply and plainly; not as one that affecteth paradoxes or desireth to speak confident or strouted speeches, but ingeniously; that nothing doth encourage me more than that which I do remember of those parliaments; not indeed alone, but joined with remembrance of former parliaments further back. And this is no other collection than Demosthenes in the like cases doth often use and iterate, when he saith in divers places, *Quod ad præterita pessimum id ad futura optimum;* which passage always he adviseth when things have gone amiss by accident and error or mishandling, and not of their proper disposition. For nothing is to a man either a greater spur or a greater direction to do over a thing again, than when he knows where he failed. And I am of the same opinion of this matter of parliament; in which subject I ought not to be novice-like or ignorant, having now served full twelve parliaments; out of which this one advice may flow which I shall now give; which is so far from tending to any acting, or minting, or packing, or canvassing, or any the like devices, as it tendeth wholly to the restoring that great Council to the natural use and ancient dignity and splendour

thereof, from which it hath in latter time, I will not say degenerated, but certainly receded; whereby it will also appear that we shall need no other foundation than that which is laid in a blessed time, which is a good King and good people; and that there is not requisite any great or laborious engine to draw kindness out of the affections of the subjects; but that it is only like the opening of a spring-head, which with a little cleansing will run frankly of itself. And yet I do not see but that there is a kind of co-operation of some beneficial accidents happened since the last parliament, which advantages added to the correction of former errors will make the matter assure itself; and that is the best kind of undertaking. But since it is first in nature to remove impediments and then to use advantages, I will speak first of the impediments or errors, and then of the advantages.

"First therefore, not to speak of the parliaments in Queen Elizabeth's time, in whose reign things were so settled and composed, as if she demanded anything it was seldom denied, and if she pretended anything it was never inquired; I will speak only of the parliament in the third of the King; at which parliament the King had granted unto him three subsidies and six fifteenths, payable in three years; notwithstanding that the extraordinary charges of his first coming in might be well satisfied by the remaining payments of the subsidies granted to Queen Elizabeth and incurring in his Majesty's time; notwithstanding that there was at that time a very still and calm of peace, without any noise of wars; notwithstanding that there was no offer or speech of any gift or liberality from his Majesty to the subjects, save only an ordinary pardon in the end of the parliament, prepared as in former times; notwithstanding that it was a parliament of augmentation of revenue unto the Crown in respect of the attainders that passed by parliament of the powder-traitors, and divers forfeitures and confiscations granted by the two great statutes of recusants; and notwithstanding lastly that it was a stout and free session of parliament, and the King noways more absolute than scarce three years' reign of a moderate prince could make him. So as I desire no better glass of the affections of the subjects of England in their own nature to help their King than this;—a strange thing that they should without any occasion of war or offer of retribution begin with the King where they left with Queen Elizabeth; who reigned twenty-seven years before she had so much as a double subsidy,

and that by half-payments in four years; and yet the manner of this is as worthy to be noted as the matter; for the ancient majesty of the kings of this realm was then preserved, in that those subsidies were never demanded nor moved from the King; much less made the business or errand of the parliament; but after the parliament had sitten a good while, an honest gentleman (by name Sir Edward Montague) stood up and in a plain familiar manner moved for two subsidies and four fifteenths; concluding with these plain words, that so much he thought would content, and less would not be well accepted; whereupon the two subsidies passed upon question the same day, and yet nevertheless upon conference with the Lords touching the occasions of the King, and by persuasion of some good servants of the King's which were gracious with the house, and chiefly out of their own good affections, came on afterwards to three. But in the succeeding parliament in 7° when that the Lord Treasurer that last was had out of his own vast and glorious ways to poor and petty ends set afoot the Great Contract, like the Tower of Babylon, building an imagination as if the King should never after need his people more, nor the people the King, but that the land should be no more like the land of promise watered with the dew of heaven, which sometimes was drawn from the earth and sometimes fell back upon the earth again, but like the land of Egypt watered by certain streams and cuts of his own devising; and afterwards either out of variety, or having met with somewhat that he looked not for, or otherwise having made use of the opinion, in the end undid his baby that he had made,—then grew the change. For after that the parliament was once in taste with matter of bargain and contribution and retribution and this same *quid pro quo*, the generous disposition of free giving unto the King, and the politic arguments of persuading it upon reason of estate, became dry things, and the endeavour grew to be to draw from the King, and to buy him out of certain profits and regalities which lie as it were intermingled in the subjects' interest; so that in conclusion, though the King's wants had been (beyond that that was convenient) displayed and hanged up as it were in tables before all men's eyes divers months together, yet that parliament ended in the gift of one subsidy and one fifteenth."

He then goes on to explain the errors which had led to the failure of the last parliament, in the passage which we

have already read and discussed at large; which therefore I shall skip. The conclusion, you may remember, was that the shortest direction for dealing with a future parliament was to do just contrary to all that was done in the last.

"Upon the instruction of these errors for the time past" (he then proceeds) "I shall give an affirmative counsel for the future. But first I must interlace that which I mentioned before; which is some advantages that have happened since the last parliament; that I may ground my advice upon both.

"These are, first the great continuance of time of intermission of subsidies; which being four years the last parliament, will now run on before a parliament can be called to six years; a time unto the realm of greater pause from payments than hath been known in this age; whereby it is the more probable that they will fall on to remember their duty in this kind.

"The next is (to speak plainly), I do not think but the breaking up of the last parliament (what inconvenience soever otherwise it might partake) since it is past it had this good, that it will be a kind of discipline to a future parliament to contain themselves more and to spend the time better; and likewise the particular punishment and questioning of Nevell, Chute, and Hoskins, will be some lesson of moderation in speech; and the punishment of Sharpe and Cornwallis will be a caution of plotting or packing to trouble the waters.

"But the great accident which hath intervened is the bending of Christendom to the old ply and bias of war in the Low Countries, and of divisions in France, with a dependency of the party reigning upon the Council of Spain; whereunto now add a further point which is new and of more alarum than in former times; that is, the straight conjunction by marriages of France and Spain; upon which state of Europe I may conclude as of a thing that I see before mine eyes, that although such a shimering as the war of Cleve was too weak to work any effect, yet these things will give fire to our nation and make them aspire to be again umpires of those wars; or at least to retrench and amuse the greatness of Spain for their own preservation. And this is a subject worthy for counsellors of state and others of quality to work upon to move a parliament, which is ever best persuaded by somewhat that is above their capacity; and not to stand as in a shop to set out the King's graces, whereof

every man will take upon him to discern, and to value his own judgment by disvaluing the pieces."

A.

That last was not likely to be very palatable to James, was it? Unwarlike as he was in his natural disposition, and ignorant, I suppose, in the art of war; valuing himself not only upon his pacific policy as involving a great moral virtue, but likewise upon his skill and science as a peace-maker among the nations; he must surely have been a little startled by the notion of calling a war-parliament and engaging himself in a struggle with France and Spain united.

B.

Say rather, making himself *ready* to engage if necessary. His function would have been rather to command the terms of peace than to engage in war. But this required warlike resolutions and preparations. True; the advice was likely to startle the Beatus Pacificus a little; but it is not the less notable on that account. For certainly the pacific character of James's foreign policy was then (and has been ever since) popularly regarded as pusillanimous and inglorious, and was the chief cause of the growing dissatisfaction of the people with his government; not without reason perhaps, if we may judge by the event; for I take it that a bolder and more warlike attitude assumed by England at this time might have prevented the thirty years' war that followed. I do not affect to understand the subject well enough to form an opinion of my own, either as to the equity or the policy of the case; but such has been the general judgment of historians; and it would seem from the last passage that Bacon's opinion pointed that way at the time. It is quite in accordance with the views which he expressed both before and after. You may remember that in his first speech in the last parliament he drew attention to the "darkness of the state of Europe" as the prime motive for strengthening and provisioning the government at home.

And a few years later, when the course of events at last compelled the King to take up arms, I have reason to believe that Bacon advised him to strike a much bolder and more effectual stroke than he was prepared for; which would possibly even then have quite changed the issue. But the real crisis was now. The death of so great a man as Henry the Fourth was enough to unsettle the balance of power in Europe; and it was while affairs were settling again that the force of England might be most effectually applied. A well-declared resolution on her part to stand on jealous watch against any increase of the Spanish power would not only have kept that power within its banks, but would have converted English Puritanism and anti-popery into zealous supporters of the government. And what might have been the ultimate consequences of so considerable a change in the direction of popular feeling when it was as yet only beginning to feel its strength, it is impossible to guess. It can hardly be doubted that the difference would have been very great. It was one of the tides in the King's affairs which, taken at the flood, might have led to fortune. "The history of Europe at that epoch (says Carlyle) meant essentially the struggle of Protestantism against Catholicism, —a broader form of that same struggle of devout Puritanism against dignified Ceremonialism, which forms the history of England then. Henry the Fourth of France, so long as he lived, was still to be regarded as the head of Protestantism; Spain, bound up with the Austrian empire, as that of Catholicism. Henry's 'grand scheme' naturally strove to carry Protestant England along with it; James, till Henry's death, held on in a loose way by Henry; and his political history, so far as he had any, may be considered to lie there. After Henry's death, he fell off to 'Spanish Infantas,' to Spanish interests; and, as it were, ceased to have any history, nay, began to have a *negative* one." Now Carlyle speaks as an English Puritan of the seventeenth century, and though I think he underrates the earnestness of the mere *political* movement—the war against prerogative, not as an anti-religious but as an anti-popular power,—which

was going on, and which (as interests the most discordant will make common cause so long as their paths happen to coincide) naturally allied itself with the religious movement; yet no doubt he here represents truly the devout faith of the popular and rapidly-prevailing party, of whatever different elements composed, which constituted "his Majesty's opposition" in James's time. This party felt that England in his hands was falling away from her proper position among the nations; falling (to use Carlyle's phrase) from the positive into the negative;—and grew every year more and more disaffected. But you see it was not through Bacon's advice that he declined into this course. Bacon would have had him take advantage of that full tide,—of the ambition of his people to be umpires of the commencing struggle; which he could have done by putting himself at the head of the Protestant interest. Failing to take the current when it served, James lost his venture; and the rest of his voyage was bound in shallows and in miseries.

A.

Yes, but how is it that Bacon had so little influence? His ideas by your account seem to have been always right; but he must surely have been wanting in some great quality or other; for he appears never to have carried the policy he recommended; never, at least, to any successful issue.

B.

Why, whom do you consider the wisest man in England in this summer of 1847? Choose your own hero, and tell me whether he can *carry* the policy which he would recommend. What could Bacon do more than suggest and advise? The reins were not in his hands. So far from having a commanding voice, there is no reason to believe that at this time he was even acquainted with what was going on in council, still less that he was advised with about it. I dare say he was not aware, when he wrote this letter, how far the King had already committed himself in his negotiations with Spain concerning the marriage. The

first motion had been made from Spain some time before; and though James had not positively pledged himself to anything, he had yet entertained it favourably, and in a spirit which made it impossible perhaps now to assume an attitude of opposition, even if upon better thoughts he had felt so inclined; impossible perhaps for Bacon (when informed how the matter stood) even to advise such a policy, had he been in a position which gave him a right to press his advice; which at present he was not.

These considerations are I think quite sufficient to exempt him from any responsibility for measures adopted by the government against his advice. But I am going to be candid and make an unnecessary concession. I certainly can imagine that an over-modesty and a too easy acquiescence in the decisions of his superiors in matters for which they, not he, were properly responsible, was a fault in Bacon. Into a fault on that side he might have been betrayed by his natural disposition, and even by what I regard as his virtues.

A.

Which of his virtues?

B.

Humility, openness of judgment, and whatever is averse from boldness and self-assertion. It may seem strange perhaps to talk of qualities like these betraying a man into a fault. But I take it that in the hero of active life *boldness* (which in excess we call impudence, and the property of which is either to feel a confidence which one should not, or to affect a confidence which one does not, feel) is in its due proportion a necessary ingredient. Bacon has himself told us, that in civil business it is like action in public speaking, the first, the second, and the third requisite. Now I can well believe that this was a quality in which he was himself deficient, it being indeed scarcely compatible with real candour of character or with true perspicacity and sobriety of judgment.

A.

By boldness, of course you do not mean bravery.

B.

Not bravery in the modern and good sense, which gives a man ascendency over the wise; but bravery in the old and bad sense,—the command of effrontery and an unabashed countenance,—which gives a man ascendency over the foolish. I was once asked in what quality of greatness I considered Bacon's character deficient. I answered that it might perhaps be a little wanting in *robustness*. And this may partly account for his not having acquired that command over the counsels of the state which would have enabled him to carry out his own ideas. When I allow however that his character may have wanted robustness, I do not mean that I find any traces in it of sickly delicacy. He was an effectual workman; and had he made it his one object to acquire a greater command and ascendency over the government; had he turned the whole weight of his abilities and energies that way, and insisted upon it as a condition of his service, he might possibly have succeeded. You must not however forget that a man cannot well play two principal parts in the same piece; and that the principal part which he had himself chosen long before as his own, and to which the accidents of his fortune had almost confined him for the first fifty years of his life, was that of a leader, not in politics, but in philosophy. The interests of his country were indeed at his heart, and he was anxious to serve them by all the means he had; but the interests of Man, which were to be wrought by the purification, corroboration, and illumination of the human understanding, had a still higher claim upon him; and the means by which they were to be pursued had a more natural affinity with his disposition. We have seen that, a few years before, in surveying the small effects which had followed his endeavours to serve the state, his own reflexion was—not that

he ought to have been more strenuous at that work, but that he ought to have confined himself to the work which was more properly his own;—that "in leaving undone the good which he could do by himself alone and applying himself to that which could only be done with the help and consent of others, he was not discharging the duty which lay upon him." And though this consideration did not (as we have seen) prevent him from again offering his services as soon as he thought there was a chance of acceptance for them, yet it may very well have justified him before his own conscience in confining himself to the offer without insisting upon the acceptance. Had he kept aloof from politics altogether, I suppose nobody would have blamed him; and when we find him engaging in them so far as always to give good counsel and render effectual help (as he has hitherto done), only failing to obtain that commanding influence by which he might have overborne the worse counsels and prevented the errors of others, we should rather praise him for doing so much than quarrel with him for doing no more. Whether it was wise to attempt to unite the two vocations at all, is questionable. To take the *lead* in both would probably have been quite impracticable. And if the lead in politics could not have been effectually won and maintained without some assumption of that boldness which is "the child of ignorance and baseness,"—which "seeth not dangers and inconveniences," or affects not to see them,—we can the better excuse him for declining the attempt, as incompatible with the higher functions of a nature which "hated all imposture," and "had a kind of familiarity and relationship with truth."

A.

The apology is sufficient. His own nature was doubtless the best judge of what it was fit for. And I admit that it is not fair to quarrel with a man for not attempting to do everything that ought to be done; the rather because it would most probably end in his effecting nothing.

Well, now for the "affirmative advice."

B.

"Now therefore I will proceed to an affirmative concerning these wishes and advices which I have thought of for a future parliament, which I do no less in heart than for form's sake submit to his Majesty's better judgment. And although perhaps they may seem *antiqui moris*, yet I persuade myself they will master the time, and be far more effectual than those counsels which may seem more agreeable to the modern arts. And I would they were as well able to endure the touch of his Majesty's judgment as I am sure they are worthy of his greatness.

"First therefore let there be an utter silence, as of the King's part, of matter of money or supply, or of the King's debts or wants; they are things too well known. And let not the King doubt but that some honest man will, after they have sat awhile, fall upon them. Nay I will presume further to say (as putting a case speculative, which in act and event I hold an impossibility), if subsidies should never be given nor spoken of in the next parliament, yet the meeting and parting of the King and his parliament with due conservation of the majesty and authority of the King, which heretofore hath suffered, and will ever suffer as long as money is made the mere object of a parliament, and without heats or contestations or oppositions between him and his parliament, I hold to be a thing of invaluable consequence, both in reputation and towards the substance of future affairs. For kings, as my Lord Treasurer was wont to say, never ran away for debt; and if there should be a parliament which should not give (the King's case being known as it is), and be without a pretext for so doing, then the King is justified in taking all just and lawful courses for making the best of his own;—a thing rather to be pointed at than discoursed upon."

Here you see we have the former advice urged again with still more confidence and emphasis than before; but again unfortunately urged in vain; for the King never could succeed in acting upon it to the end. You see also how by implication Bacon distinctly deprecates any attempt to try the strength of the prerogative, except as a last resource, when the Crown should be manifestly driven upon it by the fault of the other party. He would have the matter so carried that the parliament should be compelled either to do what was right or to put itself clearly in the wrong; a most

important precaution,—upon which, if it should come to a struggle at last, the issue of the struggle must depend.

Next we come to a passage which may perhaps a little shock the moral historian.

"Secondly, the better to prevail in opinion that the King can subsist of himself without troubling his people, (which is the point hath hitherto been wanting, to the great prejudice of the King's proceedings,) although it be enough unto the purpose in hand that it be kept as a secret in state and men suffered to think upon it diversely, so that the King proceed with confidence as if he saw his own way and were resolved what to do; so yet, not to make it too mystical, two things may be done; the one, to put it upon the perfect patrimonial expected from this enfranchisement of copyholds and improvements of wastes; adding (for though the King should never do it, if such be his mind, yet he may make use of the opinion,) the disforesting of forests in the remote parts; and likewise upon a revenue upon wards of recusants. The other, to turn it also upon the opinion of some great offer for a marriage of the Prince with Spain. Not that I shall easily advise that that should be really effected; but I say the opinion of it may have singular use, both because it will easily be believed that the offer may be so great from that hand as may at once free the King's estate; and chiefly because it will be a notable attractive to the parliament, that hates the Spaniard, so to do for the King as his state may not force him to fall upon that condition."

A.

I do not think the moral historian need object to that; considering the extreme delicacy of the subject, for a man in Bacon's position to touch upon; for Bacon (though perhaps he did not know, and though he certainly had no right expressly to assume it), must at least have suspected that that hope of relief from Spain was in fact no empty pretence, but a thing really to be apprehended; and moreover that the embarrassment of the Exchequer was really and truly the King's great motive for entertaining it. In allowing it to be represented to the parliament as a thing to be feared, and as a danger which nothing was so likely to avert as a seasonable and sufficient relief of the King's wants, no

one can say that he would have been practising any deceit upon them. In instilling such an apprehension he would only have been teaching them to believe what he did himself believe to be true.

B.

And in using it as a means of persuading them to vote a liberal supply, he would only have been persuading them to do what he himself thought most advisable, and for a reason which he himself thought just, urgent, and sufficient. As an officer of the government who was not a councillor, he could hardly have represented to the King more distinctly the inconveniences of the policy he was pursuing, than by recommending him to let the prospect of it be held out *in terrorem* to the parliament. There were some able men in favour of the Spanish match, but it is clear that Bacon was not.

Next comes another difficult point,—how the King, being really in such pecuniary difficulties, might preserve the appearance of majesty and not be seen to be solicitous about money. For however people may talk about the dignity of open dealing, there is something in English eyes essentially undignified in asking for money which you cannot claim. Poverty may be dignified; but it must be poverty that can subsist without begging; mendicancy never can; least of all mendicancy in a superior.

"Thirdly, it must be foreseen in particular that this proceeding of the King according unto his greatness and (as they speak) *a cavallo*, be not disgraced and turned as it were to a scorn by any poor and mean shift to provide money while the parliament sits, as by any petty borrowing or the like; but absolutely the King must have money in his purse, and not be noted for any pressure of want at that time. Wherein other means may be thought of, but two things do recur to my remembrance at the hardest. The one is, that although I do commend my Lord Treasurer much for determining of the commission of sales, wherein the King was at much loss in the bargains, though less at the latter end than at the first; but then the loss was chiefly in that men culled out the best parcels,

so as the smallest things gave the greatest loss; yet in a case of necessity, and for the preservation of the present which includes the future, I could wish that some three or four great and entire things well and thoroughly surveyed, were sold at a just price to some great persons, to bring a gross of 40,000*l.* or 50,000*l.* of ready money against such a time. The other is, that the King may make as much more by the creation of some eight barons; which course, though I do not in my own judgment approve, no more than I do the other of sale [of] lands, if greater [evils] could be as well avoided as these things might be disliked; yet so much I see, that this number may be like enough to be drawn on by one and by one in suits, and the King never the better for it. And I call to mind how Guicciardini censures Pope Clement for not raising money by creating cardinals until Bourbon were at Rome gates; neither do I see that it makes any great difference to the people or country whether a man of 5000*l.* land be a baron or a knight, but rather that it will strengthen the King's service and the like in the Upper House."

There you have a censure, implied in the exception, of the sale of titular honours as a source of revenue: another of the bad habits upon which James's necessities forced him; and one from which it may be said that the nation has never recovered; for though peerages are not now sold for money by the Crown, they are bartered by the government for party services, which is almost as bad. It has equally the effect of depriving such honours of all their true value.

"Fourthly, for any inviting of the parliament to give by offer of any flowers or sprigs of the Crown or prerogative, it is that I have already condemned; or rather experience hath condemned, not I; and besides in the course I take, it falls of itself; for it is but a crotch of a money-parliament, which I avoid; and certainly as [to] the stomach of the time, it feeds rather upon matters of fancy and opinion than things solid, so as those things will diminish much and satisfy little. [I wish indeed that] if anything be petitioned in that kind from the parliament, it may receive a weighed and gracious answer. But it is the embracing of worthy causes, and the advancing of worthy persons, and the protecting of his people in true religion, peace,

and justice, that are the true retributions. As for the *medietate linguæ* of Sir Charles Cornwallis, I will not be so saucy as to speak of it, the rather because somewhat hath been happily and in good time done by his Majesty in that kind already."

The allusion here is to a letter from Sir Charles Cornwallis to the King,* in which he recommended a more impartial distribution of favours between the Scotch and English. The engrossing favour of Somerset was no doubt a great cause of the disaffection of parliament; and I suppose that which had "been done happily and in good time" to correct it was the advancement of Villiers, which had lately begun.

"Fifthly, agreeable to the same grounds, I am against it, that after the manner that hath been used to prepare for a parliament, the King should be more scrupulous or tender in suits or other projects than at another time; as if he should keep a kind of diet against a parliament. Let his Majesty according to his great and inbred wisdom and goodness proceed justly both in parliament and out of parliament, without note of difference. For these things do but savour of weakness; and whatsoever shows either fear or need of a parliament hurteth, and is but a lecture of boldness. Only such things as are *ex diametro* opposite to a parliament, as these pardons were, or any more new impositions, or embasings of money and the like, must be avoided."

A.

What pardons?

B.

I have not been able to make that out yet; unless the allusion be to the general pardon which the King had ordered to be drawn for the Earl of Somerset, and which the Lord Chancellor stopped at the seal. The pardons of the Earl and Countess for the murder of Overbury were of later date.

"Sixthly, for the matter of impositions, which, though at

* Printed in the *Collectanea Curiosa.*

the first it might perhaps [have] been easily stopped, yet now cannot possibly be blanched or passed over, I do well allow the proposition of Sir Lionel Cranfield, being more indeed than I could have looked for from a man of his breeding; which is that the revenue by the late impositions raised be turned, without diminution and perhaps with increase, into raising of rates, not upon the same things, but where it shall be best for the advantage of the kingdom and disadvantage of the stranger; and that it may be so handled that it be not done directly as a laying down of the impositions, but in respect of advancing the exportation above the importation. This proposition hath four great good consequences; the one is a demonstration that the decreasing of the wealth of the realm groweth not by any outlet into Scotland, but by the overtrade with the foreigner. The second, that it will remove this same rock of the question of the power of imposing, and turn it into a nature of revenue that cannot be questioned in point of law. The third, that it will silence all the voices of the out-ports, which made the rattle, and which in these are little or not at all interested. And the fourth, that it will indeed and *de vero* mend the case of the realm, in point of trade. As for the power of imposing, it cannot be weakened nor touched by this, both because it is done to another end, and also it will be retained well enough by the great impositions of cloth and wines which shall remain, together with some few other of the new which are least subject to complaint. But whether this should be done before parliament or in parliament, not calling them to it for any matter of power, but only for advice, I am yet doubtful."

Here you have another piece of advice very important and characteristic. Upon that question of the King's power to impose, the Crown and the Commons were fatally at variance. Both were irretrievably committed to their respective sides, and had gone too far to recede. A unanimous House of Commons had distinctly denied the right which the King had distinctly asserted. The credit of privilege was staked on one side, of prerogative on the other; both being powers in their nature and of necessity indefinite, and subject to no arbiter. How was the difference to be reconciled without a trial of strength? or what could be the issue of such a trial except the virtual overthrow of the

one or the other? Bacon's suggestion (you see) is, to avoid the extremity: do not let it come to the question of which is the stronger. And how was this to be contrived? By choosing some course upon which both can agree; by using the prerogative of the Crown to do something which the Commons are willing to have done. So the two powers will draw the same way, and the dangerous question will silently drop. The advice, I say, is important: for it points to a course of policy which would not only, if adopted in the particular case, have evaded the present difficulty; but if followed as a general principle and adapted to the varieties of cases as they arose, would, I verily believe, have saved England from the convulsions which followed.

But though it was absolutely necessary to get this dispute about impositions out of the way,—(for it now stood in the front of all differences between the Commons and the King, and it was not likely that they would consent to release him from the dilemma in which he was caught, whereby he was now constrained either to continue in embarrassment or to give up his point)—though it was absolutely necessary to remove this stumbling-block out of the way, yet that was by no means the only thing necessary. It was necessary likewise to look into the *source* of the King's embarrassments,—namely his personal extravagance and ill-husbandry of the revenues which he possessed, and to endeavour to find a cure for that. It was necessary to advise him to do something which would put it out of his power to indulge his taste for that thoughtless liberality in giving, which was the origin of those illiberal anxieties about getting, from which his Majesty suffered so much diminution in the eyes of his subjects in his own time, and for which his character has been dishonoured by historians so much beyond its desert. This was a delicate point to touch; but here it is.

"Seventhly, there is another excellent preparative for the parliament, agreeable to the former grounds, if his Majesty will be pleased to hearken to it, which will create faith in all men that his Majesty will indeed subsist of himself; consisting of

two points. The one is, if his Majesty will be pleased, somewhat according to the ancient empire of Rome, to sever his receipts (as they had their *ærarium* and *fiscus* apart), and this not by creating of new treasurers or officers, but only by assignation and ordinance (but that to be inviolable), assigning some certain parts of the revenues for the discharge of such debts as touch the life-blood of the state,—as the navy, the cautionary towns, Ireland, the entertainment of ambassadors, etc.; some part as a treasure of store, like the revenue of St. Mark in Venice, or as the Romans called it, *sanctius ærarium* or *thesauros intactos*, for war and case of necessity; and the rest of the gross revenue to go for the King's ordinary charge and bounty as it shall hold out. This will give the King a great deal of reputation and trust with his people; it will secure the state in the main service thereof; it will stop the mouths of suitors; and put the superfluous charges by; and, that that is above all, I am persuaded it will free and exhilarate the King's own mind. The other is that which I must induce with a preface. I am of opinion that the King should not for profit diminish one iota of majesty, and I think it more needful for him so to do being in want than if his coffers were full; and if it be observed, the whole spirit of this discourse worketh in that faculty. So that if his Majesty's abode were chiefly at London or at standing-houses near London, I had not what to say. But since it is for the greatest part of the year otherwise, I know no reason in the world but he may keep greater state and majesty when he comes to London or to other standing-houses near about than ever he did, or any of his predecessors did, and yet save and abate a marvellous deal of charges which is obscured away.

"Eighthly, I must conclude these points of a preparation of a parliament with a point without which all the rest will be unprofitable; which is, that his Majesty will be pleased according to his great wisdom and absolute power to extinguish, or at least compose for a time, the divisions in his own house, which otherwise, as it did the last time, will be sure to have such influence and infusion into the house or perhaps houses of parliament, as we shall only grow and profit in inconveniences. For as long as any popish dissembler, turbulent spirit, ambitious or vain-glorious valuer of himself, peevish puritan, seditious bankrout, weak popular or patriot, shall make account that in opposing the King's causes he shall have a retreat or harborow overt or secret in the favour of some great person; let his

Majesty look for nothing but tempest. Therefore it must be so handled that factions be so mortified, or at least laid asleep, [and] that all do counsel a parliament and come cheerfully to it, and join sincerely in helping forward the King's business, and be all alike sensible of any opposition or frustration thereof, and in a word, that the people may as it were read in their faces consent and assurance. As for any undertaking, or opinion of undertaking, it is by all means to be laid aside, [though] it were to be wished that gentlemen that were noted therefore were not altogether vilipended or discouraged or exasperated; and the like and equal course to be held towards those that were their opposites."

So much by way of precaution and preparation, that the way might be clear, and stumbling-blocks removed. He then proceeds:—

"There resteth now to propound in the affirmative what are the fittest things to be made the subject and declared the cause of the calling of the parliament, in lieu of money and supply, which have been lost by following, and which will sooner meet the King than the King shall ever be able to overtake them by chasing them. And after this it resteth in the last place to set down what courses are to be held in the manner of calling and opening the parliament, and there to leave it to God and to emergent occasions.

"The subject of this parliament must have three properties. The first is that which I always begin with; that it be *de vero* good, *bonum in se;* and not speculatively or commonplace-like good, but *politicly* good; that is, apt and agreeable for the state of the King and kingdom. The second, that it be matter acceptable and comfortable abroad. And the third, that it be of that nature as, besides the matter itself, it doth incidentally and aptly and necessarily give the occasion and awake the desire of the King's subjects to give unto him and to provide for him.

"Ninthly, therefore, I do wish the subject of this parliament to consist of two parts in general,—increase and advance of trade and commerce; and preparation and politic constitutions for the defence and strength of the realm.

"Than these two things nothing can be more proper for these times, nor of a more proper argument to knock at the subjects' hearts for the providing the King with treasure. The

particulars of this I reserve to be deduced in a memorial by itself; because I will not break off the series of these articles of advice touching a parliament.

"Tenthly, I wish that the summons of the parliament be accompanied with a proclamation, penned in majesty, without devices or flatteries of the people, containing some touch of the general causes of calling the parliament before remembered, and some monitions touching the choice of parliament-men; of which kind there went forth an excellent proclamation in the first year of his Majesty's reign, save that it was too peremptory in one point of refusing returns.

"Eleventhly, I wish by all means that the house may be compounded, not of young men, but of the greatest gentlemen of quality of their country, and ancient parliament-men, and the principal and gravest lawyers, serjeants and readers, and the chiefest merchants, and likewise travellers and statesmen; and, in a word, that it be a sufficient house, worthy to consult within the great causes of the commonwealth.

"Twelfthly and lastly, I wish the first day of the opening of the parliament his Majesty would be pleased to speak in person, and to deliver, according to his excellent and incomparable ability, the causes of the assembling thereof; being in effect that he will not suffer his people any longer to lose the benefit of peace in trade, nor to be unprovided for the accidents of war; but forgetting his particular hath called it for their wealth and defence; making some princely and reserved description of the affairs of Christendom at this time; which is an argument worthy of the voice of so great and wise a King before his people. But for me to speak of this, it is right *sus Minervam;* and after that (as I have heard his Majesty himself protest he would not) so I think he is in the right if he speak no more; except it be upon some occasion of thanks or other weighty particular; keeping Horace's rule, *Nec Deus intersit, nisi dignus vindice nodus inciderit.* But then I wish also that the Lord Chancellor speak the same day, taking to him the part which may seem to have any harshness in it, which is touching the restriction and prohibition of the course of collecting and bundling of petitions or grievances, howsoever they be pleased to call them, and the monition concerning the licentious liberty of speaking and uncomely impatience of hearing, and likewise for the making so many general committees of the whole house which hindereth all business.

"Thus have I set down to your Majesty my poor advice

touching the greatest cause, or as I may term it the cause of causes, as things now stand; which by the simplicity thereof may deserve your pardon; humbly praying you to accept that heart that burneth perpetual as a vestal fire upon the altar of devotion and thankfulness towards you, whom God ever preserve."

A.

When do you say this letter was written?

B.

In the summer of 1615, about a year after the breaking up of the last parliament; a few months after the trials of St. John, Peacham, and Owen.

A.

Upon what occasion?

B.

Upon no particular occasion that I know of, more than the continually increasing necessity of doing something to heal the breach between King and people. That was occasion sufficient. Those scandalous and rebellious libels were the symptoms only, not the disease; to suppress them was necessary, but not enough. As you said yourself just now, the question "what was to be done next?" remained as difficult to answer as ever; but it was growing every day more importunate. Bacon's answer to it is contained in the letter I have just read. Is it not strange that the writer of it should have come down to posterity as a mere sycophant and tool of power,—the willing and active instrument of an arbitrary and antipopular government? So far as we know, he seems to have lost no opportunity of suggesting to the King that for any effectual recovery from embarrassment he had only to rely upon the affection of his people, represented and expressed in parliament; and that to conciliate the affection of parliament he had only to deserve it,—by

respecting their privileges, avoiding disputes, canvasses and bargains, and proceeding with clearness and confidence in the general offices of good government. Now unless you think that parliament ought to have been treated like the Council-table,—that the whole state of the kingdom ought to have been laid before it without reservation or dissimulation,—I do not see in what respect he can be thought to have undervalued its dignity and functions. Certainly he would have had the King recognise in the House of Commons as high a position and as ample privileges as anybody then thought of claiming for them. Neither can you say that this was profession only, and not practice. I know that Mr. Hallam distinguishes between Bacon's practice and his principles, and says that "his practice was servile but his principles were not unconstitutional." But surely an advice of this kind, given in these circumstances, must be regarded as part of a man's practice. It was an act itself, and was meant to lead to action. Neither was it a solitary act. This is the third time within three years that he has gone out of his way to urge this measure upon the King;—(the third time *at least*, for the record of these three happens to have been preserved;)—each time with a preface of apology for obtruding his opinion at all in a matter which did not properly belong to his place. To believe that while he was privately volunteering and pressing upon the King such advice as this, he was at the same time privately encouraging him in unconstitutional, illegal, and antipopular courses, is at least hard. One cannot be expected to believe it without some evidence; for if we do, we must believe also that he was not so much an unprincipled courtier as a stupid fellow. Now you are to observe that the evidence upon which the reviewer charges him with perverting the laws, championing exploded abuses, pushing back the human mind, and so forth,—if it deserve the name of evidence at all,—is at best negative; while the evidence which goes the opposite way is at worst positive; the one is drawn from what he did *not* do; the other, from what he did. On the one hand we find him not refusing to do certain things

which he is commanded to do by those who have a right to command, and which he has himself no right to decline without abandoning his place of service; on the other hand we find him endeavouring (uncommanded, uninvited, not without fear of being rebuked for overboldness,) to get certain things done. The things which he does not refuse to do, being commanded, are said (and for the sake of the argument we will suppose truly said) to be unconstitutional; those which he goes out of his way to get done, are unquestionably constitutional; and yet it is from the first, and not from the last, that Macaulay would have us infer his feelings, wishes, and objects! It is difficult to find a parallel case as an illustration, which will not seem exaggerated. It is as if the good steward of Timon of Athens should be charged with pandering to the vices and ruining the fortunes of his master, because he still continued to be his steward and therefore an instrument (however reluctant) in dispensing those prodigalities, which he was daily "against the authority of manners" praying him to limit.

A.

You must remember, however, that these things are new. People have been obliged to form their opinion of Bacon without knowing the part he took in these matters.

B.

That is true; but you must remember in your turn that I formed *my* opinion under the same disadvantage. The evidence which everybody had to judge from led me to suppose him a very different person from what he was commonly taken for. That idea led me to seek for further evidence, and all the further evidence which I discovered confirmed the impression. I do not find fault with people for not knowing what advice Bacon gave the King about calling a parliament and dealing with it; but I say that the tenor of the advice, being now produced, shows that they were very bad guessers; that the inference they drew as to Bacon's character from the very abundant evidence which

they had before them was strangely inaccurate; as far from the truth as if one should hold up Flavius as an example of a bad steward, because the economy was bad of the house in which he served. I take these newly discovered pieces as tests. If I had been wrong, they would have convicted me; if Macaulay had been right, they would have confirmed him.

A.

Either way, they must be taken as (so far) settling the question of fact. Whatever may have been Bacon's errors and infirmities, it is impossible to doubt, in the face of these evidences, that the ends he was aiming at were patriotic, and that the means by which he hoped to compass them were legitimate, and what we now call constitutional. Certainly it must be strong evidence, after this, that will persuade me that any of the oppressions of the times were owing to him. As long as it is possible to believe that he was a dissuader of them, though an ineffectual one, I shall hardly think that he was a suggester or adviser.

EVENING THE FIFTEENTH.

A.

A few evenings since, I thought you had disposed satisfactorily of the Peacham case; so far at least as to show that it did not implicate Bacon, even as an accessory, in the guilt (such as it was) of applying torture. But upon looking into a book about State Trials, of which I had a dim recollection, I find that there was another case, four or five years afterwards, in which Bacon did actually *recommend* to the King the putting of a prisoner to torture.

B.

A man named Peacock, you mean.

A.

I think that was the name. How do you reconcile that with your doctrine that Bacon was averse to the use of torture himself, and only consented to be present in obedience to commands which he had no right to dispute?

B.

I said that in the particular case of Peacham it seemed to be so, and I told you the particular evidence which made me think so. I did not mean to say that Bacon disapproved of the application of torture universally. His opinion on the subject has not been recorded anywhere that I know

of. But he knew that it *might* be made a means of discovering the truth when it could not be discovered otherwise; and I can easily believe that there were cases in which he thought it *right* that it should be used for that purpose. The opinion was countenanced by both the theory and practice of all the civilized world, I believe, except England. And even now, if torture were still legal, cases might still arise in which it would be difficult to give a good reason for not using it. That it should be prohibited absolutely and universally is, I have no doubt, quite right. But many practices are very properly forbidden in *all* cases, which might nevertheless in *some* cases be very properly resorted to.

A.

That is a hard saying; please to make it a little easier.

B.

It is a general rule, I think, in judicial proceedings, that no fact, however certain, which has not been formally proved in court, shall be taken into consideration. Have you any doubt that the prohibition of this practice in all cases without exception is a good thing, and conducive upon the whole to the ends of justice?

A.

No, I dare say it is.

B.

And yet cases will sometimes occur in which formal proof is not to be had of facts which are at once certain and material. Can you deny that in such cases the practice of taking into account facts *not* formally proved would (if it were not against the rule) be a good thing,—conducive in that particular to the ends of justice? Can you doubt that, if the rule were suspended, it would be the Judge's *duty* to take such facts into account,—for if he did not, injustice would be done, and done knowingly?

A.

Well?

B.

Then that is a practice which it is proper to forbid altogether, yet which, if it were not forbidden altogether, ought occasionally to be resorted to. And in like manner, though I have no doubt whatever that the use of torture ought to be totally and absolutely prohibited, I am not quite so sure that so long as it continued unprohibited it might not have been used on some occasions with justice. A man (for instance) who is certainly implicated in some murderous conspiracy, might be compelled with my consent to take his choice between disclosing his secrets and suffering a good deal of pain. And though it is natural to feel a certain sympathy with a man who will rather endure torment than betray his accomplices, I would not be deterred by that. Fidelity between accomplices in murder may be a virtue, but it is desirable to make it as difficult a virtue as possible. Everything depends upon the circumstances of the particular case; and of the case in question we know scarcely anything, except that Bacon wrote the words you allude to,—(which hardly amount to a definite *recommendation,* and were hastily thrown out when he had professedly made no judgment upon the matter),—under the impression that Peacock was only a mask worn by some more dangerous person, and that he was wilfully concealing what he had no right to conceal. Now of all faults this was the one for which Bacon had least compassion. There can be no doubt, I think, that he was by nature a merciful man, and not at all disposed to be a severe punisher. All accounts concur in that. Severity to the offence, compassion to the offender, so far as the two could be distinguished, was his rule. But he seems to have thought that mercy was due only to penitence, and that there could be no true penitence where there was not clear confession. Human frailty might be pleaded in excuse of

the offence, but not of the denial of it, or at least of persistence in denial. I confess I think that the principle is sound enough. How far it applied to the particular case I cannot say, for I know nothing about it. This short letter,* reporting as it does only a passing impression, contains all we know from any authentic source concerning the nature of Peacock's offence. I believe he *was* put to the torture; but for what purpose, on what grounds, and in what manner, we have no means of knowing. And without knowing something of these things, it is idle to speculate or talk about the matter.

A.

Was it noted by any contemporary as a harsh or unjust proceeding?

B.

Not that I ever heard of.

A.

Well then, what are we to have to-night?

B.

I think we may go on with the review.

A.

"During a long course of years this unworthy ambition was crowned with success. His sagacity early enabled him to per-

* "Sir E. Coke is now afoot, and according to your Majesty's command, signified by Mr. Secretary Calvert, we proceed in Peacock's examinations. But although there have been very good diligence used, yet certainly we are not at the bottom; and he that would not use the utmost of his line to sound such a business as this, should not have due regard neither to your Majesty's honour nor safety.

"A man would think he were in Luke Hutton's case again; for as my Lady Roos personated Luke Hutton, so it seemeth Peacock personateth Atkins. But I make no judgment yet, but will go on with all diligence, and if it may not be done otherwise, it is fit Peacock be put to torture. He deserveth it as well as Peacham did.

"I beseech your Majesty not to think I am more bitter in it because my name is in it," &c.—Bacon's Works, Vol. vi. p. 240.

ceive who was likely to become the most powerful man in the kingdom. He probably knew the King's mind before it was known to the King himself, and attached himself to Villiers, while the less-discerning crowd of courtiers continued to fawn on Somerset."

B.

If it is a long paragraph, I had better stop you here.

A.

There are only eight or nine lines more.

B.

Then read to the end, and I will say what I have to say when it is done.

A.

"The influence of the younger favourite became greater daily. The contest between the rivals might however have lasted long, but for that frightful crime, which, in spite of all that could be effected by the research and ingenuity of historians, is still covered with so mysterious an obscurity. The descent of Somerset had been a gradual and almost imperceptible lapse. It now became a headlong fall; and Villiers, left without a competitor, rapidly rose to a height of power such as no subject since Wolsey had attained."

B.

Now that, you will say, is a harmless paragraph, and temperate. And yet there lurks in it an insinuation which is really very injurious, and I believe quite groundless.

Why is it "probable" that Bacon foresaw Villiers's fortune long before anybody else, and attached himself to the favourite that was to be, while the rest of the world were fawning on the favourite that was?

A.

Because it is known, I suppose, that he was the foremost among the courtiers in making up to Villiers.

B.

Indeed nothing of the kind is known. When and how he first became acquainted with Villiers I cannot myself tell you. I should like very much to know. But I will undertake to say that the reviewer's suggestion is quite gratuitous, and that there is no reason for believing that Bacon ever saw Villiers's face before he had become the declared favourite, whom half the court was following. Villiers was knighted, made gentleman of the bedchamber, and received a pension of 1000*l.*, on St. George's day (23rd of April), 1615. Somerset was committed on suspicion of being concerned in the murder of Overbury in October. The earliest communication extant between Bacon and Villiers is dated the following January. It is true that they were then well acquainted, but there is nothing to show that their acquaintance was of long standing. Why then, I ask, is it "probable" that Bacon stole a march upon the rest of the world in applying himself to Villiers? I will tell you why. It is because, being (according to the reviewer) a man of vulgar ambition, to whom court favour was everything, he cannot be supposed *not* to have applied himself to the court favourite for the time being. Now it was not known that he ever applied himself to Somerset: *ergo*, he must have been applying himself by anticipation to Villiers. Grant the ground, and the inference is not illogical; sink the dates, and it may even be counted plausible. To those who only know that Somerset was James's first favourite, and that he was gradually displaced by Villiers, if they should happen to wonder why Bacon, being a court sycophant, did not endeavour to curry favour with Somerset, the answer suggested may well seem sufficient;—he could not pay court to both, and he chose the one who to his sagacious eye seemed likely to become the more powerful. But how stand our dates? Somerset was notoriously the King's favourite, and was knighted and made gentleman of the bedchamber in December 1607.* Villiers was not seen

* Chamberlain to Sir D. Carleton, Dec. 30, 1607.—State Paper Office. See also Nichol's Progr. ii. p. 161.

or heard of before August 1614, at the very earliest;* and did not receive any special marks of favour till the spring of 1615. What then had Bacon's sagacity been about during those seven years in which Somerset engrossed the King's personal favour without any shadow of competition, and was growing greater and greater every day?

A.

A question to be asked, I admit.

B.

And a question (to say the truth) not very easily answered; for take what view you will,—the best or the worst,—of Bacon's character and purposes, in any view it must have been an important object to stand well with the man who kept the gate of the King's affections. And why not? Somerset, though disliked by the popular party (chiefly because he was a Scot), was not an infamous or hated man. No man was more generally courted. The presents made to him upon his marriage are said to have been greater both in number and value than any subject had ever received. Nor was it by courtiers only that he was courted. Some of the most respected, most able, and most independent men in the kingdom were among his friends or followers. It is known that Sir Henry Nevill had great influence with him. And upon what terms of confidence and intimacy he stood with Sir Robert Cotton you may judge by the fact that, when the murder of Overbury came out, he took his advice as to the best means of suppressing evidence, whereby Sir Robert very nearly involved himself in the business as an accessary after the fact; and I suppose it was only the general respectability of his character that saved him from being brought upon the stage in a very uncomfortable manner. There could have been nothing to deter a man from adhering to a favourite whose favour was sought by such men as these. The

* Nichol's Progr. iii. pp. 18, 25.

infamy which afterwards settled on Somerset's name and threw its shadow over all his life was not yet dreamed of. Till within a few months before his committal, he was the man whom all men were emulous to honour. How is it that Bacon did not pay his court to him among the rest?

A.

Are you sure he did *not?*

B.

I think I may say I am. Certainly, if he did, all traces and all memory of it have strangely disappeared. I do not lay much stress on the fact that no letters have been preserved (though that is something), because it may be that at the time of Somerset's trial Bacon got his own letters back into his own hands. But I think it is quite impossible that so considerable a man as Bacon could have stood in any such relation to so great a person as Somerset, whom everybody was looking at and talking of, and that we should have no news of it. We have news of such intimacy in the case of persons much less conspicuous. Sir Henry Nevill and Sir Robert Cotton were intimate with Somerset and we hear of it. Sir Ralph Winwood was made principal secretary of state by Somerset's influence: we hear of that. Sir Henry Yelverton had some dependence upon him: it is mentioned as the reason why Sir Henry, though Solicitor-General, was not employed in the prosecution. But nobody mentions Bacon as having had anything to say to him. He has to conduct the prosecution against him:—not a word is dropped by any one about his having received favours from him or flattered him a little while before. He had advice to offer to the King: he addresses himself not to Somerset (as Sir Henry Nevill does on a similar occasion), but to the King himself, with a request that the letter may be private. It is negative evidence indeed, and negative evidence can rarely be conclusive. Yet I think if in any case you may conclude that a thing was not because there is no evidence that it was, you may do so in this; for, if it had been, there

must have been evidence. And the want of intimacy between them is the more remarkable because there was certainly no quarrel. Bacon and Somerset were on terms of courtesy, though not of confidence.

A.

How do you know that, if, as you say, there is no correspondence extant?

B.

There are entries extant of two or three letters, of which the first few words and the general note of the subject (which is all that remains) seem to indicate as much. And one entire letter which I found in the State Paper Office bears strong evidence to the same effect. But that which most convinces me is the costly compliment which Bacon paid to Somerset upon occasion of his marriage; and which (as I interpret it) is very significant of the relation between them, and very characteristic of Bacon.

A.

I must trouble you to unfold.

B.

Bacon was made Attorney-General in October 1613; and it seems that Somerset, though it was not his doing, wished to appropriate to himself some of the thanks. "I must never forget (says Bacon, writing to the King about two years after) when I moved your Majesty for the Attorney's place, it was your own sole act; more than that Somerset, when he knew your Majesty had resolved it, *thrust himself into the business for a fee.*" Now if, as I suppose, Bacon stood on terms of courtesy with Somerset, but not of affection, respect, or confidence, it must have been unpleasant to owe even a seeming and pretended obligation to him. The approaching marriage of Somerset (which took place in December) gave him an opportunity

of paying it off. While all the world were making presents, one of plate, another of furniture, a third of horses, a fourth of gold, Bacon chose to present him with a masque. He would have no partner in the expense, though there were others who would have been glad and did offer to join with him; but when he did these things he did them handsomely, and it is said to have cost him 2000*l.*

Now if I am right in putting these two things together, you will see that there was judgment as well as magnificence in the choice of the retribution. The obligation (whether real or not) being for assistance in obtaining an *office*, to repay it by any present which could be turned into money would have been objectionable,—as tending to countenance the great abuse of the times, from which Bacon I believe stands quite clear,—the sale of offices for money. There was no such objection to a masque. As a compliment, it was splendid according to the taste and magnificence of the time; costly to the giver, not negotiable by the receiver, valuable as a compliment, but as nothing else.

But whether you accept my interpretation of this matter or not (which, if you think it too fanciful, I do not insist upon), it must at any rate satisfy you that they were upon terms of external courtesy; and the absence of all evidence of anything beyond, ought, I think, to satisfy you that external courtesy was all.

A.

You admit, however, that there is something extraordinary in it which remains to be accounted for. And since we must give up the reviewer's suggestion as not meeting the case, what is your own solution of your own difficulty?

B.

My solution is simple enough. I say that Bacon was by nature shy, reserved, and fastidious in his attachments. He attached himself to those only with whom he had a natural sympathy, and he had no sympathy with Somerset.

You look incredulous; but consider, and tell me to *whom* Bacon ever in any special manner attached himself, that had not qualities fitted to move either affection or esteem. His attachments (those we know of) were not many; for though his personal friends and companions were no doubt numerous, they were chiefly among the obscure, of whom we have no news. Tobie Matthew, a banished man; Sir Michael Hickes, one of Burghley's secretaries; Sir Thomas Smith, one of Essex's; Sir John Constable, his own brother-in-law; Mr. Bettenham, a reader of Gray's Inn, "*vir innocens, abstinens, et contemplativus;*" are among the few whose intimacy with him happens to remain on record. Bishop Andrewes, a greater name, belongs to the same class; and perhaps Sir Fulke Greville should be added. These were all early friends, whose attraction was not in their greatness but in themselves. Of the *great persons* to whom he applied himself, the list though short is probably complete. First, Burghley and Robert Cecil. These, if not for their intrinsic merits, at least on account of their near relationship, he might, I suppose, cultivate without suspicion of sycophancy. Neither will you much object to the Lord Chancellor Egerton; a man deserving and respectable in all ways, who throughout his life deserved particularly well of Bacon, having been always a favourer of his claims. Who else? You will probably be surprised to hear that there are none left but Essex and Buckingham; both of them men whose singular personal attractiveness (especially at their first entrance, before the one had been soured by disappointed, the other intoxicated by prosperous, ambition) was sufficient of itself to draw on an intimacy, without any help from their position. Of the probable origin and motives of his attachment to Essex I have already spoken.* And Buckingham, different as he was from Essex in most things, resembled him in this—that when Bacon first knew him he was a modest youth, sensible of the responsibilities of the station to which he was called, and anxious for advice and assistance. Had he been able

* Evening 4th; at the end.

to retain this virtue along with those others for which he continued to be distinguished, if not among men, at least among favourites,—had he continued to invite and receive the "parental advice" of Bacon in the same spirit in which he began,—he might perhaps have added to the rare fortune of being the favourite of two successive kings that of being the favourite of the people and of posterity. Certainly the manner in which their acquaintance proceeded in its first stages, of which we have sufficient evidence, was on both sides noble and becoming. And nothing could be more natural.

Now I cannot think that this list is a long one, considering the circumstances; or that it indicates an indiscriminate appetite for the favour of great persons; especially when I consider the number of great people about the court whose countenance might have been useful to him, but for whose countenance he never sued.

A.

I admit that no exception can be justly taken to any of these attachments, whether policy or natural affection were the original inducement. And I suppose I must accept your explanation of his non-attachment to Somerset, namely, that he did not like the man; though I might suggest that perhaps Somerset did not like *him*.

B.

That I think very likely. Bacon, being such a man as I take him for, and being always like himself, was not at all a man to be liked by Somerset. Had he been the man the reviewer takes him for, it would be difficult to explain why he did not turn himself into a shape that would have been more attractive.

A.

Had his heart been set upon it, you think, he could have found a way to make himself agreeable to a man even less open to flattery than Somerset, and necessary to a man

who stood even less in need of help? Why yes; I think he might. And indeed why should I trouble myself to make out a charge against Bacon on this ground? *I* never said he was a sycophant.

But now I want you to tell me something about the fall of Somerset; for though I see that Macaulay founds no charge upon it, you must be aware that very grave charges have been made against Bacon for his part in that affair, and I think they have recently become more popular.

B.

Very popular indeed. But do not be afraid of that. Remember that the popular judgment, which is of great weight in matters upon which the people have an interest in judging correctly, is in matters like these of no value whatever. In histories of past times the popular opinion is in nine cases out of ten merely the opinion of the man who happened first to tell the story in a readable book or in a picturesque way. The historian who comes next after him, finding a track made, naturally follows it. A third, finding two witnesses both in a tale, naturally believes and repeats it as it is told: and so on till it is universally received. But if the first man had happened to tell another story, that other story would have been adopted just as readily and received just as universally.

This case of Somerset is now more accurately known to us than most cases of the kind are; known to us far more accurately than to those who first made a story of it; and, to me at least, it presents no mystery at all. But unfortunately the first readable accounts of it were written by men who had no means of correct information, and (what was worse) had much interest in the scandal, and none in the truth. The love of gossip, the love of slander, the love of horror, and the love of filth,—working in the dark upon materials supplied chiefly by credulity and mendacity,—claiming to be considered authentic because the writer was himself an ear-witness of what he reports (which proves at

the very most not that the story is true but only that he did not himself invent it), and greedily devoured by readers of like appetites with the authors—have made a strange puzzle of it. But throw Weldon and Wilson and Roger Coke aside (who had not half such good information on the subject as you and I)—take the facts as they stand, and the whole story is quite intelligible and natural.

A.

Throw the gentlemen aside by all means; I have no personal acquaintance with any of them. But as for the facts, my information is of the loosest; I must trust to you for them.

B.

You must know then that there are two ideas with regard to this business which have taken possession of the popular judgment. One is that before the murder of Overbury came to light James had already grown weary of Somerset, and wanted to get rid of him to make room for Villiers. The other, that the King had been guilty of some great crime of which he dreaded the disclosure, and which he knew that Somerset had the means of disclosing. What this crime was, the genius of historians has exhausted itself in vain endeavours to conjecture.

Now I cannot find that there is any sufficient ground for either of these surmises.

With regard to the first; it is true that a letter from the King to Somerset has been lately brought to light, from which we may infer that a change had come over Somerset himself; that he had grown moody, jealous, irritable, querulous; and that his conduct had given James a great deal of pain. But James's tone is throughout that of disappointed affection; of a man injured and distressed by his friend's unkindness; as unlike as possible to the tone of a man whose own love has cooled and who is seeking an occasion to quarrel. This letter must have been written not more than seven or eight months before Somerset's

arrest; possibly much nearer the time. It is too long to be read at length, but it gives so lively a picture of the temper of both parties, and is so much to the purpose, that I will read you a few passages.—The occasion was apparently some vehement complaint from Somerset of the King's treatment of him, suggested no doubt by jealousy of Villiers and the new court-faction which had gathered round him. After protesting that his suspicions were groundless, and speaking largely and warmly of his merits as a faithful servant, the King goes on:—

"And in those points I confess I never saw any come towards your merit; I mean in the points of an inwardly trusty friend and servant. But as a piece of ground cannot be so fertile but if, either from the own natural rankness or evil manuring thereof it become also fertile of strong and noisome weeds, it then proves useless and altogther unprofitable; even so those before rehearsed worthy and rare parts and merits of yours have been of long time, but especially of late, since this strange frenzy took you, so powdered and mixed with strange streams of unquietness, passion, fury, and insolent pride, and (which is worst of all) with a settled kind of indured obstinacy, as it chokes and obscures all these excellent and good parts that God hath bestowed upon you. For although I confess the greatness of that trust and privacy betwixt us will very well allow unto you an infinitely great liberty and freedom of speech unto me, yea even to rebuke me more sharply and bitterly than ever my master durst do, yet to invent a new art of railing upon me—nay, to borrow the tongue of the devil,—in comparison whereof all Peacham's book is but a gentle admonition,—*that* cannot come within any compass of friendship. And do not deceive yourself with that conceit, that I allowed you that sort of licentious freedom till of late. For as upon the one part you never passed all limits therein till of late; so upon the other I bore, God Almighty knows, with those passions of yours of old, dissembling my grief thereat, only in hope that time and experience would reclaim or abate that heat, which I thought to wear you out of by a long-suffering patience and many gentle admonitions." And again:—"I protest before Almighty God I have borne this grief within me to the uttermost of my ability; and as never grief since my birth seized so heavily upon me, so I have borne it as long as I possibly can." . . . "But the

lightening my heart of this burden is not now the only cause that makes me press you undelayedly to ease my grief; for your own furious assaults upon me at unseasonable hours hath now made it known to so many that you have been in some cross discourse with me, as there must be some exterior signs of the amendment of your behaviour towards me. These observations have been made and collected upon your long being with me at unseasonable hours,—loud speaking on both parts,—and their observation of my sadness after your parting with me, and want of rest." . . . "God is my judge, my love hath been infinite towards you: and the only strength of my affection towards you hath made me bear with those things in you and bridle my passions to the uttermost of my ability. Let me be met then with your entire heart, but softened by humility. Let me never apprehend that you disdain my person and undervalue my abilities, and let it not appear that any part of your former affection is cooled towards me." . . . "Hold me thus by the heart. You may build upon my favour as upon a rock that never shall fail you, and that never shall weary to give new demonstrations of my affection towards you—nay that shall never suffer any one to rise to any degree of my favour except they may acknowledge and thank you as a furtherer of it, and that I may be persuaded in my heart that they love and honour you for my sake; not that any living shall come within the twentieth degree of *your* favour."

Here surely are materials enough for so very ordinary an accident as a quarrel between dear friends. Whether it was a distaste which would have led to aversion, as such distastes often will, or only one of the *amantium iræ* which would have ended in the renewal of love, it is impossible to say; the connection having, upon another and a very sufficient occasion, been brought to an abrupt termination. But nothing can be more natural than the thing itself. A man with such a secret in his breast, and such a danger over his head as Somerset had had for the year and half preceding, would naturally lose the lightness and gaiety and pleasantness which had made his society delightful. The change would naturally lead to expostulation, the expostulation to a quarrel.

As for the notion that a fresher cheek had caught the

King's eye and seduced him from his older favourite,—that is merely a comment of the court, very natural for courtiers to make. But why should you and I, who listen with contempt, if we listen at all, to the court-scandals of 1847, take for gospel those of 1615? There were courtiers enough, no doubt, who could invent and believe and circulate such a rumour as that. So well indeed did they believe it, that more than one attempt was made afterwards to overthrow Buckingham by the same device,—that is, by dressing up and perfuming a pretty boy and throwing him in the King's way. Those attempts proved (what without such proof we might have been bold enough to guess) that there were persons about the court who *believed* James's affection to be only for the skin. Of course there were; and of course there are persons who will believe it now. To the impure all things are impure. But with regard to the *fact*, they proved if anything only that the gentlemen were mistaken, for none of their Ganymedes succeeded in disturbing the constancy of the King's affection for Buckingham.

So much for the first of these popular ideas. For the second,—the supposed secret crime,—it is true that the agitation and anxiety betrayed by the King on the day of the trial does upon a superficial consideration afford some colour for the suspicion. But when it is carefully looked into, two things become evident: first, that the King's agitation may be readily accounted for without supposing any such guilty consciousness; and second, that his conduct throughout the whole affair was inconsistent with any such supposition.

In September 1615, Somerset (though such distastes as I have spoken of had arisen between him and the King, though rumours had naturally been bred thereby that he was falling into disgrace, and though Villiers was coming into favour) still retained all his honours and offices, and was as near as ever to the King's person. The rumours, however natural, were unconfirmed as yet by any outward act. Towards the end of that month proof was obtained that Sir Thomas Overbury had been poisoned in the Tower two years before. The King, being informed of it, immedi-

ately selected the man who of all the men in his dominions was most practised in such investigations, and whose reputation stood highest for uncompromising integrity,—Sir Edward Coke, Chief Justice of the King's Bench,—and enjoined him under an awful imprecation to search the matter to the bottom without fear or favour. "God's curse" (he said) "be on you and yours if you spare any; God's curse be on me and mine if I pardon any;"—an imprecation prompted by an emotion with which everybody can sympathise, though expressing itself with that hasty and intemperate vehemence which was characteristic of the man; and to be understood only as the outbreak of a natural horror at the crime, and an earnest resolution to do justice without respect of persons.

Up to this time I do not find that Somerset was known or suspected to be implicated in the matter. It was not long, however, before Coke, finding what great people he had to deal with, begged to have persons of higher rank joined with him in the Commission, especially the Lord Chancellor; which was accordingly done; and in a few days both the Earl and Countess were placed under arrest. As early as the 19th of October their guilt seems to have been considered as established; for on that day, *with the sanction of the judges and upon their responsibility,* a narrative of the whole affair was delivered in open court, in which they were distinctly mentioned as the authors and instigators of the murder. Then followed the trials, convictions, executions, and confessions of the four subordinate instruments,—the under-jailer who administered the poisons, the apothecary who supplied them, the procuress who contrived the plot, and the Lieutenant of the Tower who knew of it. The examinations and confessions of these, duly subscribed and certified, remained (according to the practice of the times) to be used as evidence against the Earl and Countess; and Coke seems to have been satisfied that the evidence was conclusive, for on the 27th of November, in reporting to the King the conviction of the apothecary (who was the last of the four), he states that he was not proceeded with

until he had "*discovered matter sufficient against the Earl.*" In this I think he was too hasty. And indeed if he had not at the same time explained what that "sufficient matter" was, I doubt whether anybody would have believed that a man of such sagacity could have mistaken it for conclusive evidence. But the fact is that Coke's sagacity had never been exercised in the investigation of truth, but only in making out cases for one side or the other, chance or humour determining which. Staunch and sagacious as a bloodhound in hunting out evidence, he had no faculty for weighing it; but was as easily convinced where he had a mind to believe, as he was obstinately deaf to conviction where he had not. The consequence was that he grew (as I believe) really incapable of distinguishing proof from no proof; an infirmity which in cases like this, where it was necessary that others should be convinced besides himself, led to serious inconveniences. He had a touch of the priest too, as well as the lawyer,—the bigotry of the one and the either-sidedness of the other,—and having got scent, as he thought, of a new Popish plot, he went quite wild. This apothecary, Franklin, — a man of the worst possible character,—finding himself condemned to death, resorted to the common trick for delaying the execution of the sentence; uttering dark hints of dreadful disclosures which he *could* make if he liked; how more were to be poisoned than were yet known; how the Earl and Countess had the most aspiring minds that ever were heard of; how the Earl never loved the Prince nor the Lady Elizabeth; how strange it was that the King kept an outlandish physician about his person and the person of the Prince deceased; "thereon (he said) lieth a long tale;" how he knew things he was ashamed to speak of; and lastly (to come to the point) how "*he could make one discovery that should deserve his life;*" —with other things of the same kind,—the ordinary devices of a condemned man to put off the day of his hanging; baits, one would have thought, by which even a sensible child would not have been taken in. But the great Chief Justice not only entertained them seriously (which, in order to

ascertain whether there was any truth in them or not, it might be quite right to do), but on the strength of them did actually, before he had made any further inquiries, give out strange hints in open court of iniquities not yet brought to light, *which he knew of;* and even added a direct allusion to the death of the Prince as a mystery concerning which "*he knew somewhat.*" And it was out of these hints of his that all the mystery grew. Hearing such sayings from the oracle on the Bench, no wonder the people, whose imagination was now all awake and agape for horrors, believed that some horrible iniquity was presently to be brought to light; no wonder that, when nothing came, they supposed it had for mysterious reasons been hushed up; that thereupon they employed themselves in dark conjectures which begot a brood of dark rumours; and that when Coke not many months after was removed from the Bench, they remembered the hints which had fallen from him on this occasion, and concluded that he had forfeited the King's favour by seeing too far into his secrets. No wonder, I say, that they ran wild in such conjectures as these; for they had no means of knowing the facts. But we have. We know, in the first place, that two centuries, which have brought so many secrets out of their hiding-places, have not brought out a tittle of evidence to confirm these suspicions. And in the next place, we have access to the original records in which we can trace them to their source. For my own part, having looked carefully through the evidence, I am fully persuaded that there was nothing in them at all; that they rest entirely on the absurd credulity of Coke in believing the stories of a man who was obviously lying to save or prolong his life, and on his almost incredible rashness in giving such premature and public intimation of them. Several examinations may be seen in the State Paper Office, taken down in his own hand, evidently suggested by the information of Franklin, and aiming to elicit evidence in corroboration of it; but they come to nothing whatever beyond a few vague rumours and old wives' stories.

A.

What you say may be all true for anything I know; and when I come to inquire into the character of Sir Edward Coke, which I fancy might be an amusing study, I shall be glad to hear more of it. But I do not see what it has to do with Bacon.

B.

You will see presently. It is important (for one thing) to know that Bacon had nothing to do with the business so far. It is of some consequence too to know in what condition the business was when he had to take it up. You will find also that when the story is disencumbered of these foolish excrescences, everybody's part in it will be more intelligible.—But listen.—

The four subordinates were all hanged. And it was upon the confessions which they had made before their trial that the evidence against the Earl and Countess chiefly rested. Against the Countess, who had been much more directly engaged in the business than her husband, the case was pretty clear. But the evidence against *him*, however satisfactory to Coke, had certainly some serious gaps; nor was there now any help for it. The witnesses could not be called up again to be re-examined upon the points which their former examinations had left doubtful. The evidence must be taken as it stood. Now upon that evidence I cannot but think it doubtful whether Somerset was an accessary before the fact or not. I think it *most likely* that he was. If it could be brought to a wager, I would lay considerable odds on that side. But though there is a great weight of suspicion, there is not, as it seems to me, any absolutely conclusive proof.

It was at this point then that Coke delivered the case over into the hands of Bacon; who, having to draw the process and conduct the prosecution, addressed himself to make the best of it (such as it was) in his own way.

His impression upon examining the papers was that the

evidence against the Earl was "of a good strong thread, *considering that empoisoning was the darkest of offences;* but that the thread must be well spun and woven together." And at a later period he distinctly intimated an opinion that the presumptions, though very strong, were not absolutely conclusive; and that the case was one in which if you were obliged to say guilty or not guilty you must say guilty; but in which "not proven" would be the proper verdict.*

The case so standing was an awkward one, considering the feelings and temper of the times. It stood between two opposite dangers. If proceeded with, there was the hazard of an acquittal, which was then considered a dishonour to the King; if not proceeded with, the danger of popular indignation; for already the people were watching with jealousy the delay of the trial of the principals, and remembering the words of Weston, the under-jailer, when he hoped that the great flies would not be let through, while the small ones were caught; and had the prosecution of Somerset been dropped, it would certainly have been considered as a defrauding of justice from fear or favour of the person.

A.

Stay a moment. I understand the last point, but not the first. Anything that seemed like screening the great man from justice would no doubt have excited dangerous discontent. But how should an acquittal have been a dishonour to the King? The King's favourite falls under heavy suspicion of being accessary to the murder of one of the King's subjects. He is formally accused and tried before a jury of his peers. His peers acquit him. What is that to the King? We often hear *juries* blamed for a verdict of not guilty; but who ever thought of blaming the Crown?

* "For certainly there may be an evidence so balanced as it may have sufficient matter for the conscience of the Peers to convict him, and yet leave sufficient matter in the conscience of a King upon the same evidence to pardon his life: *because the Peers are astringed by necessity either to acquit or condemn;* but grace is free; and for my part I think the evidence in the present case will be of such a nature."—Vol. v. p. 347.

B.

A question which I have often asked myself, but have not yet obtained an answer with which I am altogether satisfied. My notion is that in the relation which once subsisted between the King and the people, such a feeling was natural and appropriate; and that, though that relation was now materially changed, the old feeling still remained;—an anomaly frequently observable in the course of social alterations, which seldom proceed altogether, but either the opinion gets ahead of the practice, or the practice of the opinion. Originally the punishment of all crimes rested with the King alone. Judges were at first only deputies; juries were at first only witnesses. In process of time they came to act and to be looked on as *checks* upon the King. The Judges were to see that the laws were not infringed; the juries to see that the fact was proved. Nevertheless the King was the accuser, and to accuse a man who was not guilty was false accusation. We can still understand that the acquittal of a man prosecuted for a *political* offence is a damage to the government that prosecutes him. And I can imagine that in James's time a similar feeling extended to all prosecutions instituted at the suit of the Crown; as in Ireland, I am told, it does to this day. The conviction seemed necessary in order to justify the prosecution; for an acquittal implied that the prisoner had been brought to trial on insufficient evidence. People had not yet learned to regard the proceeding before the Court as a bonâ fide *trial* of the question,—a reference of it to the Judge and jury to know whether the prisoner was guilty or not. Still less had they learned to regard a prejudication of that question as unjust and injurious, on the ground that, until the case had been openly heard, nobody could know. The government, having privately examined both the witnesses and the prisoner, were supposed already to have satisfied themselves of his guilt; and the trial was looked on as little more than an appeal to an open tribunal for confirmation of the judgment. Certainly from Coke's doctrine that the

evidence against the prisoner ought to be so conclusive as to preclude the possibility of an answer, it would directly and logically follow that a verdict of not guilty was a censure upon the King. And this I take to be the true explanation of the tendency pointed out by Sydney Smith as one of the capital errors in the criminal code of feudal Europe,—the tendency, as he calls it, "to confound *accusation* with *guilt*." It was not that accusation was in itself supposed to imply guilt, but that *public* accusation was supposed not to be resorted to until the guilt had been by private examination established.

At any rate there can be no doubt as to the fact, account for it as you will, that when a man was once brought up for trial, the honour of the King was then supposed to be interested in obtaining a conviction, and that this materially increased the difficulty of this case of Somerset.

Under these circumstances, then, James was naturally very anxious that Somerset should *confess*. And to induce him to do so he used some management; for which he has been very severely censured, though I think with very little reason. For when you come to consider the object which he was aiming at and the arts which he employed, you will find that the object was perfectly fair and just, and that the arts amounted to nothing more than a little indirect dealing where direct dealing was forbidden by the nature of the case. The evidence against Somerset not being perfectly conclusive, it was undoubtedly to be wished that, if he was guilty, all doubt of the fact should be removed by a confession. You will not dispute that?

A.

Certainly not.

B.

Well, but what inducement had Somerset to confess? Suppose him (as I do suppose him) to have known that the murder was going on, or at any rate to have had the means of knowing and to have *chosen* not to know,—still he knew

very well that he had kept himself so much out of sight in the business that the evidence to connect him with it could not be much or direct. He knew therefore that he had two chances of escape. The King—either upon some misgiving as to the force of the evidence, or some fear of meddling with so powerful a man, or some remnant of affection for one who had so lately and so long been his bosom friend—might shrink from bringing him to trial. And again, if brought to trial he might be acquitted. Upon what motive should he throw away two such fair chances of escape? The only motive which could be presented to him was a hope that if found guilty upon his own confession he would have a better chance of mercy than if he stood upon his innocence and were found guilty upon the evidence. Now though I see no objection to the King's *intending* to deal thus with him, nor to his being encouraged to *hope* that the King would deal thus with him, nevertheless I conceive that any *direct* engagement to that effect would have been very objectionable indeed. Anything like a bargain made with him by the King beforehand—"if you will confess I will pardon you,"—would have been a kind of compromise not to be defended. Upon such terms an innocent man might think it prudent to confess himself guilty. What then did the King do? He authorized the commissioners (but without using his name or professing to act by his authority) to *suggest* this hope to him.

A.

Hold, hold! Do you think, then, that *that* was fair? It has a very suspicious appearance. It looks very much as if he wished to tempt Somerset into a confession by holding out hopes of pardon, yet to reserve to himself the liberty of disappointing them after the confession was obtained.

B.

I should think it very unfair indeed, if he *intended to use* any such liberty. But I have no doubt whatever that

he secretly intended to perform all that Somerset might be encouraged to hope. And certainly there are many cases in which a man may with perfect propriety intend to perform what he cannot with any propriety promise beforehand.

A.

Instance.

B.

A candidate for a contested seat in parliament may *intend*, if he be returned, to obtain for an influential supporter some lucrative appointment. If he promises to do it beforehand he is guilty of bribery.

A.

True; and if he authorises a friend to *suggest* (as you call it) to the said influential supporter the hope of such appointment, what is he guilty of then?

B.

In that respect there is no true analogy between the cases. I meant only to illustrate the difference between an intention and a pledge, by instancing a case in which the one is certainly lawful, while the other certainly is not. I did not mean to compare the act of bribing an elector for a vote with that of encouraging a guilty man to confess his guilt. The elector is supposed to vote solely upon public grounds. The promise of a place (whether direct or indirect) disturbs his meditations by the infusion of a personal motive, and so taints his vote with corruption. The criminal, on the contrary, is supposed to act solely from a desire to escape. If you can make that desire a motive for telling the truth instead of lying, you do no wrong either to him or to anybody else. And supposing it probable that he is guilty, and yet doubtful whether his guilt can be clearly established, it is surely better that he should have his life spared upon confession of his guilt, than that he should be

turned loose for want of evidence as innocent; inasmuch as a conviction without hanging is a nearer approach to the true ends of justice than an absolute acquittal. Yet for all that, to make it a matter of formal bargain, pardon being offered as the price of confession, would never do. The only question is, what degree of hope may be held out, so as to supply an inducement and yet not constitute a claim.

A.

And how much hope did James hold out?

B.

He only authorized a third party to suggest, as from himself, the *probability* that pardon would be granted upon confession. Now, supposing (what after the event no one need doubt) that he meant to fulfil the hope so raised, I do not see that there was any *immorality* in the proceeding, either on the part of the King or of his instrument. The *policy* may be questionable.

A.

Neither the morality nor the policy can be well reconciled with our modern doctrines. What would Lord Denman say?

B.

True: our modern ways are different. But so, remember, are our ends.

A.

How do you mean?

B.

I mean that the end for which the rules of our modern criminal proceedings are framed is not that no guilty person shall escape, but that no innocent person shall suffer. And in pursuit of this end I cannot for my own part help think-

ing that we have gone a great deal too far; making that the object which should be only the condition, and that which is properly the object not even a condition.

A.

You are very obscure to-night. Have you no explanatory note upon the last passage?

B.

The object is, or should be, the punishment of the guilty. The condition is, or should be, the security of the innocent. Now I say that we are not content with allowing to the guilty those facilities for escape without which the innocent could not always be sure of escaping. This is right. The protection of innocence is, I repeat, an essential *condition* of justice; and if the regulations which are necessary to secure that do also afford shelter to the guilty, we must put up with it, as an evil which cannot be avoided. But I say that we now go a great deal further than this. We go out of our way to prevent the guilty from losing any of what we consider his *fair chances* of escape. We not only abstain from extorting confession,—which I approve; and from tempting and entrapping him into admissions through which he may be detected,—which I also approve; but we endeavour as far as we can to *prevent him from making such admissions.* No question may be asked of him without a formal recommendation to take care what he says, for it may be used against him. Nay, when he comes to the bar and desires to plead guilty, the Judge from the bench gravely urges him to think better of it, and not to throw away his chance of being found innocent.

A.

I have sometimes thought that, to the gods, that must appear an absurd transaction.

B.

Of all the absurd transactions which are transacted by

man in the face of heaven, I suppose it is the most absurd. A man is brought up, charged with a crime to which the law has, for the good of the community, attached a certain penalty. He is guilty; and he has so much grace, or so little hope left, that he will not deny his guilt. The Judge who is set up there to see that the law is duly carried into effect, steps in and says,—"It is true you are guilty, but for mercy's sake do not say so; for if you deny it you may possibly get off." While such a proceeding as this is tolerated, who can say that the punishment of the guilty is the *end* of our criminal system?

A.

Perhaps we carry our protection of the criminal too far; but considering the motive and intention of this practice, and others of the kind, you would hardly—

B.

Oh, I find no fault with the *intention*. It is easy enough to see how the practice came about. But can any reasonable man attempt to justify it? If it be said that another criminal in similar circumstances will plead not guilty and escape,—I say, so much the worse. Justice is thereby cheated of one victim; how does it mend the case to cheat her of the other? If it be said that since the confession springs probably from a good motive, it should not be allowed to tell to the criminal's disadvantage,—be it so: let the punishment be adjusted accordingly. If his willingness to confess shows his guilt to be a shade the lighter, justice will allow that his punishment be made a shade the lighter too. But what rational or intelligible end of justice can be served by contriving that a man who is known to be guilty shall be discharged as innocent?

A.

Then you would have the old system of the Tudors and Stuarts revived, would you? You would have Lord Denman get up the cases first, and try them afterwards?

B.

By no means. The old system failed on the other side. In many cases it did not allow an innocent man a fair chance of establishing his innocence. But in this particular point of encouraging the guilty to confess his guilt, I do think the old system was the more rational of the two. The question is only as to the mode. And after carefully considering the method adopted by James with Somerset, I cannot see the iniquity of it, whatever I may think of the policy.

A.

It failed of its end, I think?

B.

Yes; and therefore would probably have been better let alone. The failure does not throw much light on the doubtful question of Somerset's guilt. He was a man of spirit, courage, and pride, and appears to have been fully persuaded from first to last that the King (with whose weaknesses he was well acquainted, though he had not virtue enough himself to understand his virtues) would not persist in bringing him to trial. He tried in many ways to work upon him. He began by vehement upbraiding, against which he knew that James's soft and sensitive nature was seldom proof. When that failed, he tried to awaken in him dislike and distrust of the commissioners. Failing again in that, he addressed himself to his political anxieties and curiosity, and hinted at important secrets which he could reveal. When that bait was likewise examined and rejected, he boldly assailed his personal timidity. Being warned by Sir George Moore (then acting as Lieutenant of the Tower) to prepare for his trial the next day, he declared that the King *durst not* bring him to trial; adding some ambiguous words, which so astonished and alarmed Sir George, that he hurried off to Greenwich at midnight to report them to the King. They seemed to import a threat

that if brought to trial he would publicly charge the King with being himself accessary to the crime,—a threat by which he no doubt hoped to deter him from proceeding further. In this, however, he again found himself mistaken. The King, though alarmed and agitated, was not to be shaken from his purpose; but caused him to be informed in reply, that until he had either undergone his trial or confessed his crime, no private communication could pass between them. His last resource was to pretend that he could not go, upon which the Lieutenant was ordered to have him carried, and so at last he went. When he came to the bar, however,—whether it were that he was unwilling to shut the gate against mercy; or because he had been warned that if he broke out into invective against the King he would be forcibly silenced and removed; or (which is as likely as anything else), that although he had used the threat in hope to serve his turn by it, he had really nothing to say;—certain it is that he did in fact neither say nor hint anything whatever about the King. Still he did not confess, but asserted his innocence confidently, and defended himself boldly; yet after a trial which lasted twelve or thirteen hours, he was found guilty by all his triers severally, no one dissenting. And now comes the point which is supposed to fix upon the King the stain of some conscious criminality. It was observed at court that when news of the verdict reached Greenwich, the King, who had been very restless and uneasy all day, recovered his usual composure! And afterwards, though sentence of death was duly recorded against both the Earl and Countess (she had pleaded guilty the day before), he spared their lives. These are the facts, nakedly and summarily stated, from which we are to infer the existence of that portentous secret which historians have in vain taken so much trouble to unravel.

A.

And which you unravel by supposing that after all there was no secret in the matter?

B.

Why should I suppose there was? Imagine this case: a prisoner, whose life is in danger from your evidence, threatens, unless you promise to withhold that evidence, to revenge himself by publicly accusing you of some secret and odious crime: you refuse the promise and give the evidence: the court newsman, watching each turn of your countenance and gesture, observes that you seem uneasy while the trial pends, and are suddenly relieved when it is over and no charge has been made against you. Would you not think it rather hard to be set down on such evidence as *guilty* of some secret and odious crime, and to have the whole pack of historians and historical commentators turned in upon your life to hunt it out?

A.

Let me see. That would depend upon the nature of the threatened accusation. There are crimes (no doubt) which it is fatal to a man to be accused of; from the stain of which a man's reputation cannot be cleared even by the most honourable acquittal:—a misery incident (it must be owned) to most of those charges which by the nature of them do not admit of direct proof. To such a threat the consciousness of innocence would certainly not make one indifferent; and therefore, to be set down as guilty upon no stronger evidence than uneasiness while the threat hung over me, and relief when it was removed, I *should* think rather hard.

B.

And what stronger evidence have we against King James? A proud, bold, unscrupulous, desperate man had declared that if he brought him to trial he should repent of it, for he would accuse him of being himself implicated in the same crime; for whatever Somerset meant, this is the sense in which the King understood him. Such an accusation made against a King, who could not be brought

to trial for it, is like one of those to which you allude when made against a private man,—a breath which blasts the reputation for ever,—a stain which cannot be wiped out though it be supported by no evidence at all. To a thoughtful man full of apprehensions it must have threatened a whole brood of mischiefs and dangers. The fear of all this, though it did not deter James from his duty, yet did (and very naturally) disturb him. Though he resolved to confront the danger, it is not to be denied that he dreaded it. "I will not omit to acquaint your Lordship" (says one of Sir Dudley Carleton's correspondents) "that the day of the late Earl of Somerset's arraignment, his Majesty was so extreme sad and discontented, as he did retire himself from all company, and did forbear both dinner and supper, until he had heard what answer the said Earl had made. It seemed something was feared should in passion have broken from him; but when his Majesty had heard that nothing had escaped him more than what he was forced to answer to the business then in hand, his Majesty's countenance was soon changed, and he hath ever since continued in a good disposition." Now, knowing (as the writer of this letter did not know, but we do) what it was that the King had to apprehend, and with what reason, can you conceive anything more natural than all this? What is there in it so strange, that we must needs believe poor King James guilty of murder, or something worse than murder (for there is nothing so bad but conjecture has been busy smelling at it), though two centuries of scandalous curiosity have not revealed a tittle of evidence to countenance the suspicion, besides the circumstance which I have just read an account of?

A.

Are you sure that you have mentioned *all* the facts upon which the suspicion rests?

B.

I have omitted the epithets and superlatives and moral

reflexions, and perhaps some circumstances which, though insignificant in themselves, acquire a kind of significance upon the assumption of the King's guilt. But I think I have mentioned all the *facts* that bear upon the question. To enter into a detail of the communications between the King and the commissioners, which were many, would take a long time. But when I said that the King was extremely anxious that Somerset should confess, and was willing with that view that he should be led to hope for a pardon, though not that he should have a formal promise of it,—I think I have told you the sum of them all.

A.

Is there not a letter written by Somerset after his conviction to the King, which is supposed to contain obscure threats that countenance the suspicion ?

B.

There is a letter printed in the "Cabala" which is often referred to in that sense, but I think without any colour at all. It is very obscure,—for which I think the printer or the copyist is chiefly to blame; but the object of it is intelligible enough; viz., to dissuade the King from confiscating some of Somerset's property for the benefit of Villiers. The appeal is obviously to James's affections, not to his fears; and the allusion to the trial implies only that he, Somerset, still insisted upon his innocence.

But try the question the other way, and see whether anything better can be made of it so. I have shown that in order to explain the facts, it is not necessary to suppose the King guilty. Let us now begin by supposing him guilty, and see whether it is possible on that supposition to explain the facts.

By the supposition, then, the King is guilty of something of which he dreads the disclosure, and of which Somerset knows. An inquiry is raised which implicates Somerset in a capital charge, and places his fate at the King's disposal. Had he been afraid of provoking Somerset, he might easily,

by keeping the inquiry close and in his own hands, have so managed it as to keep him in temper by secretly favouring or promising to favour him. What does he do? He leaves it all to Sir Edward Coke, without any restriction upon his discretion, or any watch kept over him; puts the probe into his hands without any caution, except the injunction—given just before—as he would avoid God's curse to search it to the bottom.—Again: after all Coke's pains the evidence against Somerset is found to rest chiefly upon presumptions, and is certainly not conclusive. How easily and even plausibly he might have used that circumstance as an excuse for dropping the prosecution, and so shunning the thing he feared! What does he do? He shows only the more anxiety to press Somerset to a confession, and to have the case sifted to the bottom, with an unshrinking determination to bring it to a public issue in court. Once more: Somerset finding him in earnest, immediately threatens that if the trial be not forborne he will have his revenge by making the dreaded disclosure. Being so threatened, how easy to have soothed him by secret messages, intimating that though tried he should not be hurt—that though public opinion required the public proceeding, yet the charge should be so lightly pressed as to ensure an acquittal! What does he do? He refuses to hold any private communication with him at all until the trial is over. Lastly: when the trial comes on, though the threat is fresh in his ears, does he hang out signs of hope? On the contrary, they say—I do not believe it, but these men who believe in James's guilt say—that he contrived that the jury of peers who tried him should be packed with his enemies. And most evident it is that his anxiety was not for an acquittal which would have relieved him at once from all further apprehensions and difficulties, but for a conviction.

You see, therefore, that there is not a single movement, from the beginning to the end, such as you would have expected from him had he been acting under a guilty consciousness that his reputation was in Somerset's power; whereas, if you suppose him to have been moved at first

only by a natural horror of the crime and a strong zeal for justice, and alarmed at last only by the fear of what a proud man, suddenly falling from such a height to such a depth, might in the bitterness of revenge or jealousy do or say,—there is not a single passage in his proceeding which you might not have expected.

A.

I can believe in his horror at the crime, and I agree that his being frightened at the threat of accusation is no argument that he was guilty; and though his anxiety for a conviction might be accounted for by his wish to place Somerest's life in his power, and thereby secure his secrecy as the condition of sparing him, yet that would not account for his not amusing him with hopes of acquittal in the mean time. But as for the King's strong zeal for justice, I do not see how you can give him credit for that; when in the very case before us he hangs the instruments and pardons the authors.

B.

That is the popular judgment, and a very natural one for those to make who read history only to find examples for their moral commonplaces, not remembering that it is made up of the actions of men with hopes, fears, and affections like our own. King James was as little like an abstract principle as any man that ever lived—moved more than most men by human appetites, sentiments, and propensities, much indulged and imperfectly governed. Perhaps I should have thought more highly of him myself, if in this case he had shown himself more relentless,—had sternly shut his memory to the seven years of bosom-friendship which had just passed, and had refused to know anything of the Somersets, except as conspirators for the murder of a British subject. But I cannot admit the exception which he made in their favour as a proof that his zeal for justice was not sincere or strong. It proves at most only that it was not strong *enough* to overbear all other considerations; and in

this case the other considerations were many and material. The trial of the four subordinate instruments came first in the natural order of things. They were known to the King only as accomplices in a most atrocious murder, which being newly brought to light was still crying for vengeance. The proof was clear; the fact confessed. And though they were set on by others, it was not the less a murder. Their subornation could not be pleaded as an excuse for them, however it might aggravate the guilt of the suborners. They were all (except the Lieutenant of the Tower, who was but slightly implicated, and might properly, I think, have been spared) of so mean a condition, that they could not have been made examples of by any punishment short of hanging. There was neither any reason therefore, nor any temptation, to extend mercy to *them*. There was nothing to cause any difficulty about signing their death-warrants. The case of the Somersets was in many respects quite different. Six months had elapsed, for one thing; whereby the thirst of justice for blood was somewhat slaked and its edge taken off. The evidence against the Earl was not so conclusive, for another; and if the King had any misgivings on that head, they must have been much increased by the resolution and constancy with which, as well after as before his conviction, he rejected all invitations to confess himself guilty; while the Countess, on the other hand, had made a clear confession before her arraignment, which none of the others had done; and confession, which is certainly the only reparation possible, was in those days considered a kind of reparation which might deserve some mitigation of punishment. Then again, they were both of them in the enjoyment of so splendid a fortune, that their downfall into infamy and imprisonment made as signal an example of them as hanging did of the others. There would be no need to hang anybody if we had in all cases as great a calamity as that to hold out *in terrorem*. These were all-important differences. But the great difference of all was, that they had both been personal favourites with the King, and of one he had for many years been passionately fond. And talk as you will

about Justice being no respecter of persons, you may depend upon it that it is one thing for a King to sign a warrant for the execution of a man of whom he never heard till he heard that he was a murderer, and another to order out to an ignominious death one who has for seven years been the chosen companion of all his hours and all his moods, or of a young, beautiful, and delicate woman, whom he has entertained but a few months ago, the most favoured guest of his court, the gazing-point of all eyes and the theme of all tongues. Mind, I do not say that it was *right* to make the distinction. Lucius Junius Brutus would have acted differently. But I do think it hard that the sincerity of the King's zeal for justice should be doubted, merely because under all these circumstances his pity proved stronger than his wrath. His resolution in carrying out the course of justice so far (especially when you take into account the inward alarm which he felt) must surely be taken to outweigh the weakness which forbade him to carry it further.

A.

Perhaps it should. Somerset, to say the truth, is a person so utterly uninteresting in our eyes that we are apt to remember nothing about him except his crime and his court-fortunes, for both of which we heartily dislike and despise him. The character of king's favourite always has been, and I suppose always must be, an unpopular character with the rest of the world. But to dislike him so much for being the King's favourite, and yet to expect the King to treat him as if he were no favourite,—as if he had no more interest in his affections than another man,—is certainly neither fair nor consistent.—Well! I shall not quarrel with him for falling so far short of the true Roman standard; and I suppose you will ask me, if I do not find fault with James for his dealing with Somerset, what charge I have to bring against Bacon for helping him.

B.

Precisely. The details of Bacon's conduct would make a long story; but the sum of them is, that he did his best—

1st, to make the proofs against Somerset complete. 2ndly, to induce him to a confession. 3rdly, to set forth the evidence so clearly as to satisfy the peers of his guilt, yet so temperately as not to provoke him to any act of desperation. And 4thly,—since he saw that the King would never bring himself to consent to his death,—so to manage the charge that he should not be "made odious beyond the extent of mercy;"—that is, that the sparing of his life might not dangerously exasperate the people. To obey the King's directions in these things was indeed part of the duty of his office; and even if the directions had been more questionable in themselves, I do not know that he could have been blamed for obeying them; for if the subaltern held it his duty to disobey his commanding officer whenever he thought him wrong, government would not be possible either in war or peace. I am willing to admit however that in this instance I have no reason to believe that Bacon performed the duty with reluctance. On this occasion, as on many others, he must have regretted that James had not a little more of Elizabeth in him. But James was now nearly fifty years old. It was too late to alter him. To make the best of him as he was, was the proper duty of his advisers. You must advise your friend as you must cut your coat—according to the cloth. If the best course cannot be followed successfully without resolution and severity, to recommend it to a man whom you know to be soft-hearted and irresolute is bad advice. What I would do is one thing; what I advise you to do is another. How Bacon would have acted himself if he had been King, or what he would have advised if he had been advising a king made of other stuff, I have no means of knowing. But I am ready to believe that he co-operated with James willingly throughout this business; as thinking that whether or not better might have been done by another man, better could not have been expected of him.

A.

Be it so then. I am not well enough acquainted with

the details to be justified either in assenting or in disputing. You must be content if I withdraw for the present the unfavourable impression which I had taken of Bacon's conduct in this affair from turning over the leaves of a thick book on the subject which appeared lately—apparently learned and laborious, but utterly unreadable.

B.

The "Great Oyer of Poisoning." Excuse me; not *utterly* unreadable; for I have read it myself thoroughly, more than twice over; and by no means learned or laborious. A book written by a man who has used other people's eyes, and who has no brains at all. I am not afraid of anything you can bring against me out of Mr. Amos; but we cannot stay for him now.

A.

Then I have no more to say about this; and we may go on with the review.

"There were many points of resemblance—"

Stay. I think we may skip the next two pages. They seem to relate only to Essex and Buckingham, not to Bacon.

B.

Let me look.—Yes, we shall lose nothing by passing over this. It is one of those showy lists of points of resemblance and points of contrast, which seem to tell so much and do in fact tell nothing. You cannot name two men so alien to one another but I will draw you out a list of resemblances and contrasts as long as my arm. Essex and Buckingham were like each other in this—that they were both raised in very early youth to sudden and premature power and greatness, by the personal favour of the sovereign; and both died a premature and violent death. In other respects they were not more like nor more unlike each other than any other two young men. Both outwardly and inwardly their cases were so different that neither can

in any way illustrate the other. You might get as much light for any rational purpose by comparing their dresses as their fortunes.

Pass to the bottom of page 41, and read the two next paragraphs. We will advance Bacon to the Chancellorship to-night. His conduct in the office we must reserve for another.

A.

"To do the new favourite justice he early exerted his influence in behalf of his illustrious friend. In 1616 Sir Francis was sworn of the Privy Council; and in March 1617 on the retirement of Lord Brackley was appointed Keeper of the Great Seal.

"On the 7th of May, the first day of term, he rode in state to Westminster Hall, with the Lord Treasurer on his right hand, the Lord Privy Seal on his left,—a long procession of students and ushers before him—and a crowd of peers, privy councillors, and judges, following in his train. Having entered his court he addressed the splendid auditory in a grave and dignified speech, which proves how well he understood those judicial duties which he afterwards performed so ill. Even at that moment—the proudest moment of his life in the estimation of the vulgar, and it may be even in his own—he cast back a look of lingering affection towards those noble pursuits from which as it seemed he was about to be estranged. 'The depth of the three long vacations,' said he, 'I would reserve in some measure free from * business of estate, and for studies, arts, and sciences to which of my own nature I am most inclined.'"

B.

Yes. I shall have occasion to tell you more about this speech hereafter. In the mean time something should have been said of that very remarkable paper of "Advice to Sir George Villiers," and of the Proposal addressed to the King for compiling and amending the laws of England. Both of them belong to the period immediately preceding Bacon's elevation to the Seals,—the period during which a doubtful prospect was continually before him of being raised to that

* So in modern editions. It should be *for*.

office through the favour of Villiers. Both may be considered as peculiarly his own; for the "Advice," though drawn up at Villiers's own request, is so large and full that it was obviously a willing service; and the Proposal for amending the laws was a service purely voluntary. During the whole of the year 1616 Bacon no doubt both wished and hoped to succeed Ellesmere in the Chancellorship wished therefore to recommend himself to the favour of the King and the King's favourite. If, therefore, you want to have light thrown upon the characters of all three in their relation to each other,—Bacon, Villiers, and James,—you will not omit to ask by what *kind* of services Bacon sought to recommend himself; and if you wish to know that, you will inquire what were the services which he volunteered—which he went out of his way to perform. With this view I should particularly recommend you to read these two papers. You will find in the first his idea of the kind of servant a favourite should aspire to be, and in the second his idea of the kind of work a king should aspire to do. Whether such advice was likely to be the most *acceptable* offering which he could devise or not, you shall judge for yourself. If it was, so much the better; it is honourable to all three; if not, the more honour to Bacon.

A.

I will be ready to report when we meet again.

EVENING THE SIXTEENTH.

A.

I have read the "Advice" and the "Proposal," and I agree that such court-services as these speak well both for the court and the courtier. But the months are passing quickly; and perhaps we may not have many more evenings to spare for this work. Here are still twenty pages and more before us; running over, I see, with your marginalia. I wish we might get on a little faster.

B.

If we refrain from matters collateral, such as occupied us last time, we may. And perhaps it will be as well to try; although, to do Macaulay justice, there are few even of his passing allusions which are not made effective for his purpose. But read on, and we will see what can be done.

A.

"The years during which Bacon held the Great Seal were among the darkest and most shameful in English history. Everything at home and abroad was mismanaged. First came the execution of Raleigh, an act which, if done in a proper manner, might have been defensible, but which under all the circumstances must be considered a dastardly murder."

B.

I could dispute that; but go on.

A.

"Worse was behind—the war of Bohemia—the successes of

Tilly and Spinola—the Palatinate conquered—the King's son-in-law an exile—the house of Austria dominant on the Continent—the Protestant interest and the liberties of the Germanic body trodden under foot. In the mean time the wavering and cowardly policy of England furnished matter of ridicule to all the nations of Europe."

B.

I do not think Bacon can be held answerable for any of this. *His* policy, to judge from the glimpses we have caught and shall catch of it, was of a different complexion. But go on.

A.

"The love of peace which James professed would, even when indulged to an impolitic excess, have been respectable, if it had proceeded from tenderness to his people. But the truth is that, while he had nothing to spare for the defence of the natural allies of England, he resorted without scruple to the most illegal and oppressive devices, for the purpose of enabling Buckingham and Buckingham's relations to outshine the ancient aristocracy of the realm. Benevolences were exacted. Patents of monopoly were multiplied. All the resources which could have been employed to replenish a beggared exchequer at the close of a ruinous war, were put in motion during this season of ignominious peace.

"The vices of the administration must be chiefly ascribed to the weakness of the King and to the levity and violence of the favourite. But it is impossible to acquit the Lord Keeper. For those odious patents in particular which passed the Great Seal——"

B.

Stay. Before we discuss the question of his conduct with regard to these patents, I must remind you of some things, which you already know, but of which no hint can be gathered from anything which the reviewer has told us. I am not going to defend either the profusions of the King which had exhausted his exchequer, or the methods which he had used to replenish it. No one more deeply regretted that

profusion than Bacon; no one warned him more clearly of the dangers it involved, or urged him more frankly (as we have already seen) to adopt measures for the express object of putting it out of his power: nor could any methods for replenishing the revenue be more opposite to those which the reviewer justly censures than those which Bacon principally advised. But though the emptiness of his coffers may have been James's own fault, we are not to forget that they *were* empty: though the supplies which came in were too apt to be intercepted by greedy courtiers before they could be applied to those great exigencies of State for which they were wanted, we must remember that they *were* wanted for public exigencies of the most urgent kind. Long before Bacon had anything to do with the matter, the Crown was in fact deeply in debt; the question which concerns him therefore is only whether he advised a right course to extricate it. The tenor of his advices on that point in 1612, 1613, and 1615, we have already seen, and I think very heartily approved. Not being able however to prevail in obtaining a fair trial of that resource which he always represented as the ancient, the honourable, and the only effectual one, it remained to make the best of the other resources which were left; and upon an examination of the returns of the revenue during the years when he held the Seals, and especially after he was made a Commissioner of the Treasury, a gradual improvement is visible;—but its growth was too slow and its limits too narrow to promise any effectual recovery. And on the 23rd of July 1620 he wrote to Buckingham,—

"The King's state, if I should now die and were opened, would be found at my heart, as Queen Mary said of Calais. We find additionals still; but the consumption goeth on. I pray God give his Majesty this resolution, passing by at once all impediments and less respects, to do that which may help it before it be irremediable."

And again on the 7th of October following,—

"The state of his Majesty's treasure still maketh me sad,

and I am sorry that I was not at Theobalds to report it, or that it was not done by my fellows. It is most necessary we do it faithfully and freely; for to flatter in this were to betray his Majesty with a kiss. I humbly pray his Majesty to think of my former counsel, and this I will promise that whomsoever his Majesty will make Treasurer, if his Majesty will direct him to have relation to my advice, I will continue the same care and advice I do now, and much more cheerfully when I shall perceive that my propositions shall not be *literæ scriptæ in glacie.*"

A.

That shows that Bacon was not answerable for the courses which had been actually taken. But I should like to know what that "former counsel" was.

B.

I believe I can partly tell you. Here is part of a letter on the subject, which is unquestionably his, and which was written in 1619 or 1620; possibly the very counsel he alludes to. It has not been printed, and I will read it all.

"It may please your Majesty,

"Your Majesty having bound me both by your benefits and by your trust, which is no less obligation than the other, to have care of your estate,—in most things prosperous, but in that which is equivalent to most things defective,—will be pleased I know not only to accept of the tribute of my poor intentions, but also to pardon and allow me to acquit myself with that liberty which the good of your service requires. And as my duty bindeth me to use liberty in respect of all others; considering it should be a poorness in me, your Majesty having set so few on my right hand, to fear who stands on my left; so your grace and wisdom will give me leave to use it even towards yourself; seeing it proceedeth from a heart which you know is full of reverence and admiration towards you, and from one that useth not to urge his counsels to engage his master, but as a servant should, subjecting free counsel to the free grace and pleasure of your Majesty, who determines the choice.

"That which must help your Majesty's estate must be matter, order, and removing of impediments; and because the first two I know will rather be a troubling of the waters than

any great fishing, except the third be first looked into, it is that wherewith I will begin.

"First I am of opinion (with due submission be it spoken) that considering to what pass your Majesty's estate is now come, it is not a Commission of Treasury that can help it, but that your Majesty is to make choice of an officer, as heretofore it hath been.

"It is true, and I will be bold to speak it, that the Commission hath done you good service, and hath kept things from precipitating; and although things wax old, yet I think we do rather increase in skill than slacken in care; and your Majesty of late hath sprinkled us with some new commissioners: nay this I persuade myself that we shall be able to set the clock and to make more perfect instructions for a new Lord Treasurer and an exchequer, as well for guiding them as for refraining them, than ever was heretofore. But yet I humbly pray your Majesty with a settled consideration and exciting your own wisdom, to behold the reasons which I shall set before you concerning this counsel; and let not the regard of persons be the principal, but the nature of your affairs and the times. I for my part may truly say that in this I do not consult with flesh and blood; for neither do I seek in it my own ease, as one that, God is my witness, measureth not my life by years and days, but by services and doing good as much as in me lieth; neither have I any special aim for the bringing in of any man otherwise than *in lumine puro et sicco* who will bear in his forehead the best character of fitness for your service.

"My first reason is, that the Commission is *tardum auxilium*, specially in so great declination of your means as rather needeth shoring up and reparation than models of new re-edifying; and again for that the disease eats out the remedies if they be not speedy; neither has this been any fault in your commissioners; but it is not possible that a body of many should meet in time, meet in place, meet in mind, answerable to the assiduous care, constant pursuit, and peremptory commandment of one man.

"I may remember that when the impositions were set by my Lord of Salisbury, which amounted to between threescore or fourscore thousand pounds per annum, although it were an immature counsel and cause of much mischief following, yet comparing it in that for which I bring it, which is the point of time, it was the work of one morning; whereas when I consider what time hath been spent by us (and yet no time lost) about

settling the pretermitted duties, about the bargaining for tobacco, about the discharge of unnecessary officers of revenue of land, about the like concerning the revenue at the ports, about the revenue of recusants, about the settling of the alienations (which nevertheless was the speediest), about the Mint, about looking into defalcations, about the bringing in of your debts (which had a pretty current at the first), about the water-works, about the allum, about the casualties, about letting of copses that lie out of parks, about the coals, about keeping the forest of Dean from spoil, and many other matters, whereof some are settled at last, and some are in way, and some are in no way; and then weigh with myself in what time these things might have been done by an officer of understanding with his ministerial assistants, and what your Majesty might have gained both to purse and to forwardness to a general settlement, if they had been done in such a time; I must think that there hath been great loss in the inning of your Majesty's harvest, whereof I see no cause, except it should stay for fouler weather.

"A second reason is, that the Commission wants the high prerogative of kings' affairs, which is secrecy; wherein first your Majesty will easily believe that the very divulging and noising of your wants (begun first by the Earl of Salisbury upon art, and since continued upon a kind of necessity in respect of a commission to many) is no small prejudice to your estate both at home and abroad. But that is not it only, but how many directions are there concerning this harsh business of getting treasure, that are fitter to be given by your Majesty in private to a Lord Treasurer than communicated, nay fitter to be done by him *ex officio* than as by direction. And again how many things are there in execution fitter by him to be done *de facto et sine strepitu*, than by a commission where they must be debated and conceived into an order? Lastly, how many things would men pragmatical and of industry be encouraged to put into the ear of a Lord Treasurer, which they are fearful to bring into the dispute of a commission: as making account that when they bring it but to one man they can be but rejected, where they bring it to many they shall be noted? And although most of these things be naught, yet it is not good (specially as your Majesty's estate is) to scare away informations.

"The third reason is, that your Majesty's estate requires in point of treasure not only fidelity and judgment, but invention and stirring and assiduity and pursuit, with edifying one thing

upon another; all which cannot possibly be done by a commission where the care lies not principally upon one or two men. And somewhat it is also that an officer is more answerable to your Majesty than a commission in justice can be, specially for omissions and neglects and delays, which in this decay of your Majesty's estate, though they be not so culpable, yet they are in effect as prejudicial as misdoings.

"Fourthly, whereas many things are to be done concerning your treasure, sometimes by commission, sometimes by communication with the rest of your Council, it is not possible that these services can proceed with that strength and authority, nor be urged in that manner, as if there were a Lord Treasurer to whose place the business properly belongs, and who may decently and without envy or challenge declare himself stout and resolute in the business in respect of the greatness and duty of his place; whereas if others do it they shall be accounted but officious and undertaken and exposed to envy and crossing; it being the manner of men in things wherein they are not properly interested rather to [be] either cold or opposite or popularly pleasing than concurrent.

"Lastly, whereas that which is to be feared in an officer more than in a commission is corruption, serving his own ends, presumption, close carriage to your prejudice, and the like; all this in respect of this fresh example needeth much less to be feared; so as your Majesty shall have the good of an officer without the bad; and besides, as I said in the beginning, the Commission shall be able to set the clock to a Lord Treasurer by instructions.

"These reasons are but few in number, but in my poor opinion of great truth and weight; whereof nevertheless your Majesty in your better judgment, whereunto I humbly submit myself, will more deeply discern than I can.

"The second impediment, which if it be not removed I shall hope for little good, is a course taken and almost grown into a principle that it should so be, which is that your business in this kind goes on by one and by one and not at once, and rather by shifts to stop gaps from time to time than by any sound establishments; so that according to the ordinary proverb of the woman that roasted her hen by faggot-sticks, stick after stick, the faggot is burnt and the hen not roasted.

"This is but to let unto your Majesty a lease for life of want and misery; and I must ingenuously confess that if that

be the way, I am utterly unfit for those counsels; though I have done my best in them; but with a great deal of dislike of the course. In this your Majesty may be pleased to observe that the same thing is not good for your Majesty which is good for your servants; for it is good for them to drop out their services that they may be continually in use, and to stay sometimes till your Majesty be at a plunge that their service may be the better imprinted and remembered. But it is good for your Majesty, nay necessary as the case is, that your business be set forward in many parts at once, and that you be kept from streights afar off, and not only eased a little when they press you. Neither am I so simple and unwrought in business as to think that [all] things can be executed at once, for he that thinks all things can go on at once, I should think his head were full of wind. But on the other side, he that shall consult or provide but for one thing at once shall never overcome any great difficulties. Therefore, as your Majesty was wont to say, Order is the daughter of Heaven, which consists not of one orb to stay after another, but moves at once but without confusion: so that, as I have often advised, except your Majesty do land your business in some sort or at least anchor it, and not only cut through every wave, neither your state nor your royal heart can be at any wished rest. And better it were to cut twenty ends of Gordias' knot together, though with great difficulty at the first, than to seek to wind the ends out with an endless trouble.

"How this may be done, *Hoc opus, hic labor est.* But without a resolution that this must be the course in one kind or another, all the rest is but entertainment of time. And this the rather for that your Majesty may be pleased to note that whatsoever you do at once is for yourself: whatsoever you do by one and by one is for suitors; as baronets and creations, when they were together the profit went to your Majesty; now they come scattered it is but suits. So the raising of some rates of your customs and imports, if it had been at once it might have been your Majesty's; but coming one after another it is but suits and bounty.

"A third and last impediment (of those that go to the main) is that there is no handsome course taken to free your Majesty (who are of so royal and bountiful a nature) from importunity of suitors: I mean touching matters of benefit and reward. But your Majesty is still in a streight that either your means or

your mind must suffer. For to grant all suits were to undo yourself or your people. To deny all suits were to see never a contented face. To this end it is true that I did ever advise the continuing and upholding the commission of suits; but it having been once down and now a little up again, it is esteemed but a trick of denial and does not ease your Majesty enough. And therefore it is no way to refer to the same commissioners either of suits or treasury, but to make sorted and distributed references, and to let every man bear part of the envy; and likewise to encourage your officers in stopping suits at the seals, and withal privately to forwarn your Learned Counsel, who upon my knowledge were wont to be more negative. But above all to make a good Lord Treasurer, whose proper duty is, in this state your Majesty is in, to stir in these cases, and to stop suits, put back pensions, check allowances, question merits, translate the suit from the suitor to your Majesty in a proportion; and in short to be a screen to your Majesty in things of this nature: such as was the Lord Burleigh for many years; since whose time the succeeding examples have been such as my last Lord Chancellor well said of them, *Quæ magis nocent quam docent.*"

Here the manuscript unfortunately stops, though the letter does not appear to be ended, and the two remaining questions of "matter" and "order" are still untouched. Though it has not the outward appearance of a rough draft, being fairly transcribed in the hand of one of Bacon's secretaries,* yet the composition has all the marks of a careless and hasty first hand. In writing to the King Bacon generally began with a rough draft, which he afterwards wrote out fairly in his own hand, correcting, altering, and enlarging as he went on. It happened perhaps occasionally that there was no time to have a copy made of the finished letter; and then he may have directed his secretary to transcribe the draft; and this is probably a case of the kind. But however that be, it is evident that we have here his thoughts in their most natural dress. What do you infer?

* Edward Sherburn.

A.

Certainly not this—that the King's only need of money was for the enriching of his favourites; still less that Bacon was helping him to replenish his coffers for that purpose. A season of ignominious peace it may have been; but it is clear that even the businesses of peace could not be carried on as they should be without supplies. It is but the old question which we have asked so often, still unanswered. The letter gives me the impression of a man very anxious, earnest, and faithful; very much bent upon the *salus publica;* very much grieved with what was going on. Indeed supposing him to have disapproved as much as the reviewer does of the peace, of the profusion, and even of monopolies, I dare not say that he could have done better than present the subject in this light to the King.

B.

Especially when you remember how often and how earnestly he had advised the King to rely boldly upon parliament, and how constantly he had told him that he had no other sufficient resource. From any responsibility for the misapplication of the money raised, I think we may safely acquit him. How far he may be charged with sanctioning unjustifiable devices for raising it, is a more difficult question, which it is hardly possible to decide confidently at this distance of time and with information so imperfect.

But I must first observe that the devices actually resorted to, with or without his sanction, were not in fact so many or so monstrous as the reviewer's sweeping sentences would lead a man to suppose. Nothing was made, for one thing, of penal laws—the great mine out of which Henry the Seventh drew his wealth. Two or three heavy fines were indeed imposed in the Star Chamber, but they were imposed for great offences, and for the most part remitted. And as for benevolences, it is true that there was *one* benevolence levied while Bacon held the seals; but it was for the popular cause of the defence of the Palatinate; it

was set on foot immediately before the calling of a new parliament; the levies were going on at the very same time, I believe, with the elections,—certainly after the proclamation had been issued; and no complaint was made of it. So that this formidable list of oppressive devices shrinks when examined into the single item of monopolies.

Now as to monopolies, we know that Bacon thought them *impolitic*, and made no secret of his opinion; we know at least that in his advice to Villiers he especially urges that "monopolies (which are the cankers of all trading) be by no means admitted under the pretence or the specious colour of the public good." But if the King's power to grant such licences, upon such pretence of public good, was not yet disputed; or if, though beginning to be disputed, it was not yet abandoned, but still asserted and exercised as an indisputable prerogative of the Crown, what was the best course for a Chancellor to pursue who thought them impolitic and wished him not to grant them, it is not very easy for you or me to determine; though we may perhaps suspect that an absolute refusal to pass them would not have been the shortest way to that end.—But the reviewer had something more to say about it; let us hear him out.

A.

"For those odious patents in particular which passed the great seal while it was in his charge he must be held answerable. In the speech which he made on first taking his seat in his court, he had pledged himself to discharge this important part of his functions with the greatest caution and impartiality. He had declared that he 'would walk in the light,'—'that men should see that no particular turn or end led him, but a general rule;' and Mr. Montagu would have us believe that Bacon acted up to these professions."

B.

Does he not say what that general rule was?

A.

No.

B.

Then we must inquire about that; it is a very important point. But you had better finish the paragraph first.

A.

"He says that 'the power of the favourite did not deter the Lord Keeper from staying grants and patents when his public duty demanded this interposition.' Does Mr. Montagu consider patents of monopoly good things? or does he mean to say that Bacon staid every patent of monopoly that came before him?"

B.

Perhaps to stay all might not have been the likeliest way to get rid of any.

A.

"Of all patents in our history, the most disgraceful was that which was granted to Sir Giles Mompesson,—supposed to be the original of Massinger's 'Over-reach,' and to Sir Francis Michell, from whom 'Justice Greedy' is supposed to have been drawn,—for the exclusive manufacturing of gold and silver lace. The effect of this monopoly was of course that the metal employed in the manufacture was adulterated, to the great loss of the public. But this was a trifle. The patentees were armed with powers as great as were ever given to farmers of the revenue in the worst-governed countries. They were authorized to search houses and to arrest interlopers; and these formidable powers were used for purposes viler than even those for which they were given—for the wreaking of old grudges, and for the corrupting of female chastity."

B.

Bacon can hardly be held answerable for the *abuse*. The abuse came after, and was not a matter within the jurisdiction of his court.

A.

"Was not this a case in which public duty demanded the

interposition of the Lord Keeper? And did the Lord Keeper interpose? He did. He wrote to inform the King—"

B.

He, in conjunction with the Chief Justice of the King's Bench and the Attorney-General. But that was before any question had arisen as to the manner in which the powers granted to the patentees were *used*. The power granted to a justice of the peace may be, and has often been, iniquitously used; does it follow that there was any iniquity in granting it?

A.

"—that he had considered—"

B.

That *they* had considered.

A.

"—of the fitness and conveniency of the gold and silver thread business"—"that it was convenient it should be settled—"

B.

"Having been brought thither at the great charge of your Majesty's now agents, and being a means to set many of your Majesty's poor subjects on work." Let us at least have *all* he said. Well?

A.

"—that he 'did conceive apparent likelihood that it would redound much to his Majesty's profit'—that therefore 'it were convenient it should be settled with all convenient speed.'"

B.

"By all *lawful* means that may be thought of." Well?

A.

"The meaning of all this was, that certain of the house of Villiers were to go shares with 'Over-reach' and 'Greedy' in

the plunder of the public. This was the way in which, when the favourite pressed for patents,—lucrative to his relations and to his creatures, ruinous and vexatious to the body of the people, —the chief guardian of the laws interposed. Having assisted the patentees to obtain this monopoly, Bacon assisted them also in the steps which they took for the purpose of guarding it. He committed several people to close confinement for disobeying his tyrannical edict. It is needless to say more. Our readers are now able to judge whether, in the matter of patents, Bacon acted conformably to his professions, or deserved the praise which his biographer has bestowed upon him."

These are grave charges, friend!

B.

Very grave; and I will not undertake to say that they are wholly without foundation. I am under no engagement, as I have often reminded you, to prove that Bacon never made a mistake or a fault. But let us look into the case a little more closely.

In the first place, Bacon volunteered a pledge, it seems, as to the course he would pursue in these cases. Let us see what it was.

Here is his speech on taking his place in Chancery: volume the fourth, page 486 *; and here is the passage which touches our present subject; page 491.

"For the second commandment of his Majesty touching staying of grants at the great seal; there may be just cause of stay either in the matter of the grant or in the manner of passing the same. Out of both which I will extract these six principal cases, which I will now make known; *all which nevertheless I understand to be wholly submitted to his Majesty's will and pleasure after by me he shall have been informed; for if* ITERATUM MANDATUM *be come, obedience is better than sacrifice.*"

Here then we have his *profession:* here is the "general rule" which he promises to proceed by. If a grant comes to the seal which he thinks objectionable, he will inform the King, and not pass it *unless the King, being so informed,*

* Trade-edition of Bacon's works, in 10 vols. 8vo.

shall bid him. That he will in any case resist the King's known pleasure, he certainly does not profess. He thinks, I fancy, that he has no *right* to do so.

A.

He mistakes his duty then, does he not ?

B.

Why should you think so ? The doctrine of ministerial responsibility had not then been invented. It was by the King's own authority that these things were done ; if illegal, it was the Judges, not the Lord Chancellor, that had authority to pronounce them void. Always the responsibility must be where the power is. If the Chancellor by refusing to pass a grant could have prevented it from passing, he would have been responsible. But it was not so. The King could not only take the seals from him and give them to whom he pleased, but he could himself sell his own patents; and it is a fact very pertinent to the present argument that one of the patents which had been most abused, and upon which Sir Giles Mompesson was chiefly called in question,—not this one, but the patent for Inns,—was actually sealed with the King's own hand immediately before the seals were committed to Bacon.

This however is not the question with which we are at present concerned. We are called on to compare Bacon's practice with his profession. Now his profession distinctly is, that if the King be resolved that a grant shall pass, he as Keeper of the Seals will *not* refuse to pass it.

A.

But he promises that he will at least stay them in certain cases: which are they ?

B.

Those which touch the present question are only the third and fifth.

" Thirdly, if it be a grant which I conceive out of my little

knowledge to be against the law; of which nature Theodosius was wont to say, 'I spake it, or I wrote it; but I granted it not if it be unjust;' I will call the Learned Counsel to it, as well him that drew the book as the rest, or some of them; and if we find cause, I will inform his Majesty of our opinion either by myself or some of them: for as for the Judges, they are judges of grants past, but not of grants to come, except the King call them."

* * * * * * *

"Fifthly, if as a councillor of estate I do foresee inconvenience to ensue by the grant in reason of estate, in respect of the King's honour, or discontent and murmur of the people, I will not trust mine own judgment, but I will either acquaint his Majesty with it, or the Council-table, or some such of my lords as I shall think fit."

Such was his promise. Unless it can be shown therefore that he failed to report objections in law or policy which he felt to be just, and which the King had not already heard and overruled,—a case which it would not be easy to establish,—I do not see how he can be accused of breaking his own professed principle, whatever objection may be taken to the principle itself. Neither do I see how any one can pretend at this distance of time to judge in what cases and to what extent it would have been judicious to press his objections. Had he resolved to resist at all hazards and to all lengths every course which he disliked, his life would indeed have presented a simple enough problem to himself, and an easy story to his biographer; but he must have given up public business. Had he acted upon that principle from the beginning, he could never have entered—had he begun to act upon it now in his fifty-seventh year, he must at once have quitted—the public service. Suppose him to have refused peremptorily to set the seal to these patents, what would have followed? The seals would have been taken from him; the patents would have been passed by some one else; and what influence he had in the King's counsels would have been gone for ever. Would that have mended the case of the public? I think not. So long as he retained his influence as an adviser, he

could do something, though not much. He could continue to urge the calling of a parliament, and (as a preparative to a parliament) the abandonment of those monopolies which were most complained of. This was his policy; he had been pursuing it for years; and whether it was the best or not, who can say? And in this he did at last succeed. A parliament was at last actually summoned; the King was at last prepared to make large popular concessions. In what way Bacon would have improved or have endeavoured to improve the opportunity, must unfortunately be left to conjecture. Most unfortunately, one of the first measures of that parliament was to remove him from the helm and throw the direction of the counsels of the kingdom at the critical time into other hands; and though I admit that his removal was necessary, and rendered necessary by his own fault, I think no one will maintain that the affairs of the nation went the better for his absence.

This I submit in answer to the reviewer's general censure of Bacon for not staying "*every* patent of monopoly that came before him." I waive the question whether he thought *every* such patent bad for the public (which is not at all likely), and I say that, even allowing that all monopolies were bad things, and that he knew them to be bad things, still it does not follow that he ought to have stopped them all indiscriminately.

A.

But how for the particular case?

B.

I am coming to that. Particular cases I admit there might be in which he was to blame for not stopping them. But how much he was to blame in the instance selected by the reviewer, and selected no doubt as the worst he knew of,—how far he was personally implicated in the illegalities committed—I cannot quite satisfy myself. We have not any clear and continuous account of the case, and the fullest we have comes only from, or at least through, the

accusing party. The story, as well as I can collect it,* is this :—

This patent for the sole manufacture of gold and silver thread was not a new one, but was granted originally to the Countess of Bedford in Salisbury's time, when Bacon does not appear to have had anything to do with it. In 1615 the patent was surrendered and granted anew, "upon warrant of the former commissioners," to two of the agents that had been employed by the Countess. Still Bacon had nothing to do with it. It was then that Sir Edward Villiers became a partner and invested 4000*l.* in the business; and, finding (it would seem) some difficulty in protecting the patent, applied to Sir Henry Yelverton, then Solicitor-General. Sir Henry, by his own account, "disliked the patent as being a monopoly," and advised a change in the form; namely that it should be "by indenture between the King and them; whereby they should be but as agents; and the King might easily put it down, if it were found inconvenient." A proposition to this effect being submitted to the King was referred by him, at what exact date I cannot learn, but apparently about the close of the year 1617, to Bacon, then Lord Keeper,—Sir Henry Montagu, then Chief Justice of the King's Bench,—and Sir Henry Yelverton, then Attorney-General; and, if one may judge by an impatient message from the King, dated the 7th of February 1617–18, desiring despatch and a speedy account of the matter, it appears to have met with some obstruction. The result however was a certificate (not preserved) that they approved of Sir Henry's advice, and that "the course was good, *if well used.*" Later in the same year a petition was exhibited by Sir Edward Villiers in the name of the two new patentees, representing the obstructions which they met with in enforcing their patent, the expenses they had incurred, the losses they were suffering by the delay; and praying for an amendment of the commission. The petition was referred by the King to Bacon in the summer vacation of 1618, and appears to have been still under

* See Journals of the Commons, 1620–21; and Bacon's Letters.

consideration when, in consequence of some objections urged against the project, he sent another message (4th Oct. 1618), desiring him to call in the Chief Justice, the Attorney, and the Solicitor;—to consider with them of the fitness, the conveniency, and the probable profit of the business; and to report with all convenient speed. The letter which the reviewer quotes as Bacon's interposition, is the joint answer of Bacon, Montagu, and Yelverton to this reference. In the end, the indentures (drawn by Yelverton upon warrant from Buckingham) passed. If therefore they involved any provisions contrary to law, I admit that Bacon was implicated in the illegality; but this has not been asserted, so far as I can discover.

The provisions, whether legal or not, do not appear to have been stringent enough for the purposes of the undertakers; and they desired of the King a proclamation to give them effect. This proposition the King referred to Sir H. Yelverton and Sir Thomas Coventry, his Attorney and Solicitor; who joined in drawing up a proclamation accordingly. With this again Bacon it seems had nothing to do.

But now comes the point which touches him, and unluckily I cannot be certain that I understand exactly how the case really stood. I collect however that, in the indentures between the King and the undertakers, certain commissioners were appointed on the King's behalf for the execution of the provisions. These commissioners were "the Lord Chancellor; the Lord Treasurer; Sir Henry Yelverton; [the] Solicitor-General; Sir Giles Mompesson; Sir Francis Michell; and Sir Allen Apsley: but (says the witness upon whose authority I give these names) *the principal were Sir Giles Mompesson and Sir Francis Michell.*" The commission is stated to have been directed to any two of them; and I conclude that, though the other five were officially included, yet the business, as often happens in matters of this kind, was left practically and personally to the management of Sir Giles and Sir Francis. So far, a man so fully occupied as the Lord Chancellor was, may be reasonably presumed to have been ignorant of what was going on, and

excusably ignorant. But I am not sure that the excuse will hold for the next stage in the affair, without the aid of an uncertain and charitable conjecture.

The monopoly, in spite of Yelverton's device, was still a monopoly, and of course included some power to punish interlopers. Sir Giles Mompesson, finding I suppose the regular process to be slow, devised a new one. He proposed to those tradesmen who were likely to interfere with the patent that they should enter into "a bond not to meddle or make any gold or silver thread;" and upon their refusal called upon Yelverton to imprison them. Yelverton drew the warrant; though reluctantly, as he afterwards declared; and not without the express confirmation of the Lord Chancellor. The prisoners remonstrated, but he gave them no answer. They complained to the Lord Chancellor, were called before him, heard, and sent back to prison. Thereupon the City petitioned the King on their behalf; and the King immediately discharged them.

Now if this be a true statement,—and I have no reason to suspect the truth of it, except that it rests only upon the authority of Yelverton, who would naturally wish to make his own share of the fault less by throwing as much of it as he could upon another,—I cannot here plead ignorance as an excuse for Bacon; for it seems he twice confirmed the imprisonment, and once after hearing the parties in their own defence. And though we do not know what the particular conditions of the bond were, what the exact powers of the commissioners, or how far, under the large and indeterminable authority of prerogative, they might, as the law then stood, be legally stretched; yet it is not probable that the imprisonment admitted of any absolute justification in point of law; or Yelverton, one of the best lawyers of his time and the party with whom the blame principally lay, would have taken that ground of defence; which he does not seem to have done. What then can can be said for Bacon?

A.

Yes; what?

B.

If by simply supposing that it was an arbitrary and illegal proceeding in which he took part with open eyes for fear of offending Buckingham, we could account for the whole thing so as to leave no difficulty behind; I should merely say that it was a great fault, which cannot be defended, and which the multitude of his business, the abuses of the time, and the precariousness of his position can but a little extenuate. But I feel that when all this is freely admitted, and all questions of probability depending upon my interpretation of Bacon's character are put aside, the case is still strange and unaccountable. Upon this supposition, his conduct implies not only a want of fortitude, but a want of prudence and foresight which it is most difficult to understand. The date of the imprisonment of these people for refusing the bond I cannot find; but it was stated in the House of Commons on the 6th of February 1620–21 that Sir Giles Mompesson "came but lately into the business;" and if so, the thing must have been done at a time when Bacon knew that a new parliament must very soon be summoned. He knew of what especial importance it was to avoid at such a time all just occasions of clamour and discontent. He knew that there was no grievance so certain to be complained of as illegal imprisonment of London citizens for the purpose of enforcing an unpopular monopoly. Whether he considered the King's interest, or Buckingham's, or his own, it was equally imprudent. If we find no difficulty in supposing him to have committed such a fault, how can we account for his committing such a blunder?

A.

It does seem strange. Have you any way of accounting for it yourself?

B.

It is but a guess; but it may be true for all that. In the first instance, when he was only called on to confirm a

warrant drawn by Sir Henry Yelverton, I can easily believe that he did it in reliance upon Sir Henry's judgment and without looking into the case. Afterwards when the parties were heard before him and recommitted, he must be supposed to have known and considered what he was doing. But then it appears that this recommittal was *immediately followed by their discharge,* upon the petition of the City to the King in their behalf. Now my guess is that, seeing these things had been done in the King's name and in virtue of his supposed regal power, and that all judicial acts tending to define the precise limits of that power were pregnant with consequences more than could be foreseen, Bacon wished (provided the substantial claims of justice could be otherwise satisfied) to avoid any formal decision implying that the act done was contrary to law and equity; therefore that he preferred this course of letting the King discharge the prisoners upon the City's petition: by which course the City was gratified; the King, in place of being convicted of oppression, was enabled to do a gracious and popular act; the sufferers were relieved; and all question concerning the legal extent of the prerogative was avoided. This supposition does not quite clear him, I know; but it makes the case intelligible. They had among them done a wrong thing; the question was how to get it undone with least scandal, mischief, and noise. And in this respect it seems to have been successful; for although when all these things were hunted out by the Committee of grievances this was presented among the foremost and greatest, it does not appear to have raised any formidable clamour at the time. About two months before the meeting of parliament the King's Learned Counsel—Bacon, Montagu, Hobart, Coke and Crew—drew up a list of those grievances which they thought most likely to be complained of. Among these were three patents which concerned Buckingham's special friends; but the patent for gold and silver thread was not one of them.* So it cannot have been making much noise

* Compare the letter from the Lord Chancellor and the two Chief Justices to Buckingham, 29th November, 1620 (vi. p. 265), with Bacon's

at that time; and I find no news of it in any contemporary letter that I have met with.

A.

And how many unsupported propositions does this guess of yours involve?

B.

Chiefly that the petition from the City followed *immediately* upon the recommittal of the prisoners. In the notes from which I draw my information the word is "*thereupon.*" I must also suppose that Bacon knew that such a petition would be presented, and that the King would grant it; and moreover that the illegality of the proceeding was not obvious, absolute, or unquestionable. Of these points I have no proof, though I know of nothing to make them improbable.

A.

But what did Bacon himself say?

B.

That unfortunately we do not know. We only know that he did say something in justification of himself.

A.

But I thought the whole case had been examined in parliament and unequivocally condemned?

B.

So it was, as far as it related to the principles. Sir Giles Mompesson's case was bad enough, I dare say.

A.

But surely Bacon's part in it was also inquired into and complained of by the House of Commons?

letter to Buckingham of the same date (vi. p. 262). The original of the former is in the Bodleian Library, and is signed by Coke and Crew as well as the others.

B.

True; but with what result? He was touched in two points; as a referee before the patent was granted, and in this matter of the imprisonment afterwards. In a conference between the Lords and Commons, of which we have no detailed report, his name was brought in question; and he, being one of the Lords' committees, made some apology. The Commons asked whether he spoke as by commission from the House of Lords generally; to which the Lords all answered no. His conduct in saying what he did was afterwards complained of in the Upper House, as irregular; he confessed that it was, he was reprehended, and apologized. *What* he had said we are not informed. We only know that he did say something in justification of himself,—and probably had something more to say.

A.

That is a pity. Still we may look to the broad result of the whole proceeding and judge from that.

B.

Be it so. The broad result was that his conduct having being inquired of in the House of Commons, and called in question in conference with the Lords, was at last passed by in silence. The question was stirred and dropped.

A.

That might be because graver matter was coming. As far as it goes however it is in favour of your guess; which for want of better satisfaction, I am content to receive as probable and consistent with what we know.

B.

As the explanation which involves the fewest improbabilities.

A.

Yes.

B.

Then try the next paragraph.

A.

"In his judicial capacity—"

B.

Stay; we are now coming to Bacon's real delinquency; "the little picture of night-work remaining among the fair and excellent tables of his acts and works;" which he never himself affected to excuse, but penitently acknowledged the faults, and submitted without a murmur to the very severe punishment with which they were visited. No true friend to his memory will affect to find him blameless here. But *how much* he was to blame; whether they were such faults as imply a corrupted will and degraded nature, or such as a good man might be betrayed into almost unawares; these are fair questions, which we are especially bound to consider fairly, because it is to our judgment—the judgment of the "next ages"—that he made his appeal. They were committed in his fifty-seventh and fifty-eighth year; none of them before, few if any after. The fifty-six years preceding had been passed in the rough work of the world, "in slavish, tyrannous, and turbulent times," and passed—may I say? (for the proceeding we have just been discussing came later)—without a stain.

A.

Without any stain which the reviewer has succeeded in fixing upon him—I think you may say that. And certainly when I look back through the history of his past life as you have told it, and the series of evidence new and old which you have produced; and when (placing myself in the year 1616) I endeavour to imagine what things I should have *expected* of him in future,—what I should have thought likely, what unlikely, and what impossible,—I must confess that I should have set down any action implying baseness,

a bad heart, and a corrupt will, among the impossibles. You said the other night very truly, that what we should expect of a man in a future case we ought to presume of him in a doubtful one; from which it seems to follow that if his actions admit of any explanation which discharges them of the worse kinds of moral turpitude, that explanation is to be accepted as most probably the true one.

B.

That admission is all I ask; and upon this understanding let us hear Macaulay again.

A.

"In his judicial capacity his conduct was not less reprehensible. He suffered Buckingham to dictate many of his decisions."

B.

Instance!

A.

No instance quoted.

"Bacon knew as well as any man that a judge who listens to private solicitations is a disgrace to his post. He had himself, before he was raised to the woolsack, represented this strongly to Villiers, then just entering on his career. 'By no means'—said Sir Francis in a letter of advice addressed to the young courtier—'by no means be you persuaded to interpose yourself either by word or letter in any cause depending in any court of justice, nor suffer any great man to do it where you can hinder it. If it should prevail, it perverts justice; but if the Judge be so just and of such courage as he ought to be, as not to be inclined thereby, yet it always leaves a taint of suspicion behind it.' Yet he had not been Lord Keeper a month when Buckingham began to interfere in Chancery suits; and his interference was, as might have been expected, successful."

B.

Instance!

A.

No instance quoted: but I can find you instances in plenty of Buckingham's interference, if that is what you want.

B.

Of Buckingham's interference, you may. But can you find me an instance in which his interference affected Bacon's decision?

A.

I am not so sure that I can do that.

B.

I must hear of one before I admit the justice of that last charge.

A.

That is a fair condition. Perhaps we shall come to one presently.

"Mr. Montagu's reflections on the excellent passage which we have quoted above are exceedingly amusing. 'No man,' says he, 'more deeply felt the evils which then existed of the interference of the Crown and statesmen to influence Judges. How beautifully did he admonish Buckingham, regardless as he proved of all admonition!' We should be glad to know how it can be expected that admonition will be regarded by him who receives it, when it is altogether neglected by him who gives it. We do not defend Buckingham, but what was his guilt to Bacon's? Buckingham was young, ignorant, thoughtless,—dizzy with the rapidity of his ascent and the height of his position. That he should be eager to serve his relations, his flatterers, his mistresses,—that he should not fully apprehend the immense importance of a pure administration of justice,—that he should think more about those who were bound to him by private ties than about the public interest—all this was perfectly natural and not altogether unpardonable. Those who intrust a petulant, hot-blooded, ill-informed lad with

power, are more to blame than he for the mischief which he may do with it. How could it be expected of a lively page, raised by a wild freak of fortune to the first influence in the empire, that he should have bestowed any serious thought on the principles which ought to guide judicial decisions? Bacon was the ablest public man then living in Europe. He had thought much and to good purpose on the general principles of law. He had for many years borne a part daily in the administration of justice. It was impossible that a man with a tithe of his sagacity and experience should not have known that a Judge who suffers friends or patrons to dictate his decrees, violates the plainest rules of duty. In fact, as we have seen, he knew this well: he expressed it admirably. Neither on this occasion nor on any other could his bad actions be attributed to any defect of the head. They sprang from quite a different cause."

B.

I admit the justice of the apology for Buckingham, and the fact, about which there can be no dispute, of Bacon's opinion on the subject. But I still ask for an instance,—one single instance,—in which he decided a case at Buckingham's request otherwise than he would have decided it upon its own merits. For nothing less than that can justify you in saying that he allowed Buckingham to "dictate his decrees." Instances in abundance can be cited of cases *recommended* by Buckingham to his favour so far as might be compatible with justice. I can produce an instance, though it seems to have been a Star Chamber not a Chancery cause, in which Buckingham's recommendation, being incompatible with justice, was not successful. Can you produce an instance in which, being incompatible with justice, it *was*?

A.

Not I. But I know nothing about the matter.

B.

Then please to remember that you know nothing; and

do not let these vague assertions and insinuations make you feel as if you knew that Bacon "violated the plain rules of his duty by suffering friends or patrons to dictate his decrees."

A.

In that case you speak of, how did Buckingham take the disappointment?

B.

As graciously as you could desire, without a word of remonstrance or complaint. And indeed with regard to all these letters of Buckingham's, which are very numerous I admit, and such as he had better not have written, I must say this—that they have not to me the appearance of letters *intended* to oversway justice. I say so, not merely because they always contain the words "so far as the justice of the cause will bear," or words to that effect; for that might be a verbal precaution which meant nothing; but because they are upon the face of them cold, formal, commonplace, containing at most a brief notice of the chief points in the case that seem to make it deserving of a favourable consideration, and never expressing any personal interest in the issue, more than the natural wish that a friend's cause may go well. Besides, they appear to have been written for the most part merely to get rid of the importunity of suitors. Many of them bear this character in their very terms;—"though * I had resolved to give your Lordship no more trouble in matters of controversy depending before you, with what importunity soever my letters had been desired, yet the respect I bear unto this gentleman," etc. And again three months after,† "Though I had resolved not to write to your Lordship on any matter between party and party, yet at the earnest request of my noble friend the Lord Norris," etc. I doubt whether any one of these letters can be produced which might not have been accompanied with some such explanation as this to

* 15th Nov. 1617. † 5th Feb., 1617–18.

the party asking for it,—"You know I cannot interfere in such causes, nor ask for any man more than justice; and justice you will have without my interference; but if you insist upon it I will write to the Lord Keeper and desire him to show you what favour he lawfully may for my sake." Now if this was really and in good faith the character and intention of these letters,—if they were not meant to be understood as meaning more,—why should I think that they had so much as a *tendency* to interfere with the course of justice? If on the contrary they were written by Buckingham with the intention of influencing the decision, we must surely have had evidence of it indirectly, in one of two ways. Bacon must either have yielded to the influence or not yielded. If he yielded, he must have pronounced many unjust decrees, which (considering the unpopularity of Buckingham, the boldness of the Commons, the friendless position of Bacon himself, and the proneness of losers to cry out) must have been heard of. If he did *not* yield, then he must in many cases have disappointed and offended Buckingham; and (considering how touchy, imperious, outspoken, and powerful Buckingham was) it could hardly be but we should find some traces of remonstrance, resentment, or quarrel, upon this score. Now I do not think that there is a word on record of menace or offence addressed by him to Bacon upon this ground. And in spite of the extreme scrutiny and fearless strictures to which Bacon's conduct was submitted while not one of these cases was above four years old, I do not remember that any unjust decree pronounced *out of deference to Buckingham* was ever even alleged against him.

If then you prefer that explanation of the case which involves the fewest improbabilities, you will believe with me that though Buckingham acquiesced in this common though bad practice of the times—(for there is no doubt that it was a common practice; I could show you scores of similar letters written by the Earl of Essex to Lord Keeper Puckering;)—yet he did not mean, and was not understood as meaning, to interfere with the course of justice or to "dictate decrees."

A.

Certainly there is nothing inconceivable in that view of the case. When my friend stands candidate for an office which ought to be given only to the fittest man, I may write a letter in his favour to the electors and hold the duty of a friend thereby discharged, without wishing to influence them in favour of an unfit man.—Whether the decrees pronounced by Bacon in the cases thus recommended were for the most part just or unjust in fact, I suppose we have no means now of determining for ourselves.

B.

No; that, I think, would be a hopeless inquiry even for a lawyer competent to judge. The particulars have not come down to us in any of them.*

A.

Then we must set this charge aside as not proved; for our reviewer does not seem to have any further proof to bring.—I wish Bacon had refused to *receive* any such letters, though.

B.

That would have made the case simpler for us. That he did keep up a continual though gentle remonstrance, which Buckingham took in good part and was always resolving and promising to write no more, is not to me improbable. Indeed the expressions I quoted just now almost imply as much; and it is a fact that letters of this kind grow less and less frequent after the second year. What if this was after all the most effectual method of overcoming the bad practice? the likeliest and the speediest? more likely to prevail than an indignant rejection?—But that you will say is a charitable conjecture. I am content for

* I suppose they will be found, some of them at least, in the record of Bacon's judgments since discovered in the Record Office, and now preparing for publication by Mr. Monro.

the present with your admission that there is no proof hitherto that Bacon was an unjust Judge. So now go on.

A.

"A man who stooped to render such services to others was not likely to be scrupulous as to the means by which he enriched himself."

B.

Mind, I deny the stoopings and therefore the likelihood. The reviewer would have made a good Attorney-General in the bad times. He has a genius for constructive accusation.

A.

"He and his dependents accepted large presents from persons who were engaged in Chancery suits."

B.

That at last is true; and I admit that it was a great fault.

A.

"The amount of the plunder which he collected in this way, it is impossible to estimate. There can be no doubt that he received very much more than was proved on his trial, though it may be less than was suspected by the public. His enemies stated his illicit gains at a hundred thousand pounds. But this is probably an exaggeration."

B.

That is skilfully put; but not quite so true. That he did probably receive *more* than was proved, I am ready to admit; because it is not likely that proof could be had of what he received in *every* case. But that he received *very much* more, I do not think at all probable. For, in the first place, it does not appear that in accepting these presents he used any caution or secrecy; nothing was done to prevent them from being brought to light, to deter informants from coming forward, or to silence witnesses; on the contrary,

reluctant witnesses were compelled to bring their evidence. In the second place,—and this is still more to the purpose, —the most eager of the witnesses against him was a man who had special means of knowing everything, and a malicious motive for telling all he knew. "One Churchill," says Mr Chamberlain writing on the 24th of March 1620–21 while the case was quite fresh,—

"One Churchill, a registrar of the Chancery, hath been the chief instrument of his ruin; who being called in question for divers counterfeit orders and extortions, and sequestered from his place with danger of further punishment, professed that he would not sink alone but draw others after him, and accordingly *hath given a list to the Lords of a number who upon examination and oath are driven to say what they know;* for otherwise there be many who come in very unwillingly, and would rather conceal their own loss and his shame, but things are already so pregnant that there is no longer palliating;" etc.

Now with such a witness against him; pursued by a raging House of Commons, with Sir Edward Coke at their head; judged by an alarmed House of Lords that sought shelter from the storm in an ostentatious compliance with the popular fury; his case given freely up to the severest scrutiny in his own absence; at a time when "greatness was the mark and accusation the game;" I cannot think it likely that the offences proved against him were only a tenth or a fifteenth part of those he had committed.

A.

What was the actual value of the presents which he was proved to have received?

B.

If you take them all together; those received when no cause was pending, which the greater number were, as well as the rest;—about 5000*l.*

A.

And where did Macaulay get his story of the hundred thousand?

B.

From a letter of Bacon's to Buckingham; which letter, by the way, it will be as well to read; as much at least as relates to this matter. Here it is:

"I perceive by some speech that passed between your Lordship and Mr. Meautys that some wretched detractor hath told you that it were strange I should be in debt, for that I could not but have received an hundred thousand pounds gifts since I had the seal; which is an abominable falsehood. Such tales as these made St. James say that the tongue is a fire, and itself fired from hell, whither when these tongues shall return they will beg a drop of cold water to cool them. I praise God for it, I never took penny for any benefice or ecclesiastical living, I never took penny for releasing anything I stopped at the seal, I never took penny for any commission or things of that nature, I never shared with any servant for any second or inferior profit. My offences I have myself recorded; wherein I studied, as a good confessant, guiltiness and not excuse; and therefore I hope it leaves me fair to the King's grace and will turn many men's hearts to me. . . . If these things were not true (although the joys of the penitent be sometimes more than the joys of the innocent), I could not be as I am."

Surely an impartial inquiry into Bacon's case should have extracted something more out of a letter like this than the fact that "his enemies stated his illicit gains at a hundred thousand pounds," and the acknowledgment that it was "probably an exaggeration."

A.

I think it should. But tell me: you say that in accepting these presents Bacon observed no caution or secrecy?

B.

I said there was no appearance of it. In some of the cases secrecy was certainly not observed; the nature of the evidence implies as much; and Sir Edward Coke remarked on two occasions how strange it was that such things should be done so openly.

A.

Was it a common practice in those times for suitors to make presents to judges ?

B.

It is usually asserted that it was; and if the truth could be known, I would bet odds that it would be found so. But I have not yet met with evidence conclusive enough to justify me in asserting it positively myself. Mr. Alford indeed,—an old, eminent, and popular member of the Commons,—avowed openly in the House his belief that it had been usual for Chancellors to receive gratuities; and no remark appears to have been made upon the avowal. This must be taken, if not as a proof, yet as a strong presumption, of the fact. It was probably one of those half-condemned practices, of which, as of the notorious corruptions which the gentlemen of our own times indulge in, it was not easy to produce distinct evidence.

A.

But were the presents received by Bacon received as *bribes*, i.e. as the price of favourable judgments, or only as propitiatory offerings, meant to bespeak or to acknowledge a favourable or a speedy hearing, but not either to purchase or pay for an unjust decision ? For certainly a man may desire to be heard favourably and yet not desire to obtain more than his due; and for a *speedy* hearing, if the speed were effected by extraordinary exertion on the Judge's part, he might even *pay*, without injuring anybody; the speed would be a clear gain to all the other suitors as well as to himself.

B.

I can find no proof that Bacon's judgments were ever influenced by the presents he received, or that he ever received a present believing that it was intended to influence his judgment. But we had better leave this question for

the present. You will find it discussed at large a little further on.

A.

It is a question to which I shall particularly desire an answer. It makes a vast difference in the character of his offence; as great as the difference between a crime of commission and a crime of omission. But we will follow our leader.

"It was long before the day of reckoning arrived. During the interval between the second and third Parliaments of James, the nation was absolutely governed by the Crown. The prospects of the Lord Keeper were bright and serene. His great place rendered the splendour of his talents even more conspicuous; and gave an additional charm to the serenity of his temper, the courtesy of his manners, and the eloquence of his conversation. The pillaged suitor might mutter. The austere Puritan patriot might, in his retreat, lament that one on whom God had bestowed without measure all the abilities which qualify men to take the lead in great reforms, should be found among the adherents of the worst abuses. But the murmurs of the suitor, and the lamentations of the patriot, had scarcely any avenue to the ears of the powerful. The King, and the minister who was the King's master, smiled on their illustrious flatterer. The whole crowd of courtiers and nobles sought his favour with emulous eagerness. Men of wit and learning hailed with delight the elevation of one who had so signally shown that a man of profound learning and of brilliant wit might understand, far better than any plodding dunce, the art of thriving in the world.

"Once, and but once, this course of prosperity was for a moment interrupted. It should seem that even Bacon's brain was not strong enough to bear without some discomposure the inebriating effect of so much good fortune. For some time after his elevation, he showed himself a little wanting in that wariness and self-command to which, more than even to his transcendent talents, his elevation was to be ascribed. He was by no means a good hater. The temperature of his revenge, like that of his gratitude, was scarcely ever more than lukewarm. But there was one person whom he had long regarded with an animosity which, though studiously suppressed, was perhaps

the stronger for the suppression. The insults and injuries which, when a young man struggling into note and professional practice, he had received from Sir Edward Coke, were such as might move the most placable nature to resentment. About the time at which Bacon received the seals, Coke had, on account of his contumacious resistance to the royal pleasure, been deprived of his seat in the Court of King's Bench, and had ever since languished in retirement."

B.

Yes. For seven or eight months.

A.

"But Coke's opposition to the Court, we fear, was the effect not of good principles, but of a bad temper. Perverse and testy as he was, he wanted true fortitude and dignity of character. His obstinacy, unsupported by virtuous motives, was not proof against disgrace. He solicited a reconciliation with the favourite, and his solicitations were successful. Sir John Villiers, the brother of Buckingham, was looking out for a rich wife. Coke had a large fortune and an unmarried daughter. A bargain was struck. But Lady Coke,—the lady whom twenty years before Essex had wooed on behalf of Bacon,—would not hear of the match. A violent and scandalous family quarrel followed. The mother carried the girl away by stealth. The father pursued them, and regained possession of his daughter by force. The King was then in Scotland, and Buckingham had attended him thither. Bacon was, during their absence, at the head of affairs in England. He felt towards Coke as much malevolence as it was in his nature to feel towards anybody. His wisdom had been laid to sleep by prosperity. In an evil hour he determined to interfere in the disputes which agitated his enemy's household. He declared for the wife, countenanced the Attorney-General in filing an information in the Star Chamber against the husband, and wrote strongly both to the King and to the favourite against the proposed marriage. The language which he used in those letters shows that, sagacious as he was, he did not quite know his place;—that he was not fully acquainted with the extent either of Buckingham's power, or of the change which the possession of that power had wrought in Buckingham's character. He soon had a lesson which he never forgot.

The favourite received the news of the Lord Keeper's interference with feelings of the most violent resentment, and made the King even more angry than himself. Bacon's eyes were at once opened to his error and to all its possible consequences. He had been elated, if not intoxicated, by greatness. The shock sobered him in an instant. He was all himself again. He apologized submissively for his interference. He directed the Attorney-General to stop the proceedings against Coke. He sent to tell Lady Coke that he could do nothing for her. He announced to both the families that he was desirous to promote the connection. Having given these proofs of contrition—"

B.

Stay. I have a word to say about all this; and it had better be said while the impression is fresh. I cannot admit this as a just representation of Bacon's part in the transaction; and to an unwary reader it would convey some wrong notions as to the nature of the transaction itself.

For Bacon's feeling towards Coke, it has not much to do with the matter; but since it is introduced here as if to explain the motive of his interference and derive it from a poor and personal passion, I must enter my protest. It is true indeed that there was no love to lose between the two. Coke had never deserved Bacon's affection; Bacon had never thought highly of Coke, except for his abilities as a lawyer. He had never thought him a wise man, or a good councillor, or an infallible Judge, or even a safe manager of such businesses as he had most at heart; nor had he mistaken his popularity for patriotism. He would not perhaps have gone so far with the reviewer as to call him a narrow-minded, bad-hearted pedant, who deserved to be made miserable; but he knew him to be wrong-headed, self-willed, unruly, violent, and rash,—a man who "flowed according to his own tides, and not according to the tides of business"—and therefore an unfit instrument for the King's service in those critical times. Having this opinion of him, I have no doubt he thought the removal of him from the bench and the council-table a happy event for the country. It is probable too that such an opinion, quickened

from time to time by personal affronts, had bred a feeling of personal dislike. But that he had "studiously suppressed" this dislike, I find no evidence whatever. He had indeed always treated Coke with the respect due to his superior place; but he had never, so far as I know, affected to feel towards him otherwise than he did feel.

A.

What do you say of that letter which he wrote to Coke on his disgrace? It seems to me very like long-suppressed spite breaking out at last; and conveying itself (not very creditably) under the mask of religious advice and consolation.

B.

I say it was a good letter, but certainly not written by Bacon. It appeared in the winter of 1616, without any writer's name, and was widely circulated in manuscript, and copies multiplied. Above thirty years after, the editor of the "Remains," whoever he was, printed it as Bacon's in a collection which contains some other spurious pieces; and it has since passed as Bacon's. But no contemporary copy that I have seen, and I have seen several, has any name subscribed; nor does any contemporary notice, and I can produce two or three, attribute it to Bacon. It is evidently the production of some zealous Puritan, who sympathized with Coke in all those courses in which he had been most opposed by Bacon and had most displeased the King; and instead of being an insidious insult under the mask of friendship, it is meant in profound earnest for a piece of good advice. I could easily satisfy you of this, if it were worth while;* but what it concerns me now to show is, that Bacon's interference in this matter need not be ascribed either to spite against Coke or to the intoxicating effects of his own great fortune; but that it was rational in the motive, sober in the carriage, and consistent throughout.

* For a full examination of the question, see "Letters and Life of Bacon," vol. vi. ch. 3, § 5.

This match between Sir John Villiers and Sir Edward Coke's daughter was in no view of it auspicious. It was a match proposed by Coke himself merely to gain Buckingham's favour, and opposed by the mother chiefly out of spite to her husband, and not at all affected by the daughter. The domestic difference had led to measures of violence which required the interposition of authority. Bacon, in conjunction with the great majority of the council, interposed in the King's absence to keep the King's peace; and at the same time thinking (and as the event proved not without reason) that the match would be bad for all parties, warned Buckingham of the mischief it would involve, in a letter as sober and rational as any he ever wrote, and advised him not to let it be proceeded in "without the consent of both parents,"—at least not before his return. Receiving no answer to this letter for twelve or thirteen days he thought it his duty to write also to the King; and as he had before represented to Buckingham the inconveniences which would follow to his brother and himself, he now represented to the King the inconveniences which would follow to the state. This letter, that you may know both why he opposed the match, and in what spirit he opposed it, and how far he thought himself justified in carrying his opposition, I will trouble you to read. You will find it in volume v. p. 479.

A.

"To the King.

"It may please your most excellent Majesty,—I think it agreeable to my duty and the great obligations wherein I am tied to your Majesty to be freer than other men in giving your Majesty faithful counsel while things are passing, and more bound than other men in doing your commandments when your resolution is settled and made known to me.

"I shall therefore most humbly crave pardon from your Majesty if in plainness and no less humbleness I deliver to your Majesty my honest and disinterested opinion in the business of the match of Sir John Villiers, which I take to be *magnum in parvo;* preserving always the laws and duties of a firm friend

to my Lord of Buckingham, whom I will never cease to love, and to whom I have written already, but have not yet heard from him.

"But first I have three suits to make to your Majesty, hoping well you will grant them all.

"The first is, that if there be any merit in drawing on that match, your Majesty would bestow the thanks not upon the zeal of Sir Edward Coke, nor upon the eloquent persuasions or pragmaticals of Mr. Secretary Winwood, but upon them who carrying your commandments and directions with strength and justice (in the matter of the governor of Diepe; in the matter of Sir Robert Rich; and in the matter of protecting the lady according to your commandment;) have so humbled Sir Edward Coke, as he seeks now that with submission which (as your Majesty knows) before he rejected with scorn. For this is the true orator that hath persuaded this business; as I doubt not your Majesty in your excellent wisdom doth easily discover.

"My second suit is, that your Majesty would not think me so pusillanimous, as that I who, when I was but Mr. Bacon, had ever through your Majesty's favour good reason at Sir Edward Coke's hands when he was at the greatest, should now that your Majesty (by your great goodness) hath placed me so near your chair (being as I hope by God's grace and your instructions made a servant according to your heart and hand), fear him or take umbrage of him in respect of mine own particular.

"My third suit is, that if your Majesty be resolved the match shall go on, after you have heard my reasons to the contrary—"

B.

Yes. What then?

A.

"—I may receive therein your particular will and commandments from yourself, that I may conform myself thereunto; imagining with myself (though I will not wager upon women's minds) that I can prevail more with the mother than any other man. For if I should be requested in it from my Lord of Buckingham, the answer of a true friend ought to be that I had rather go against his mind than his good; but your Majesty I must obey; and besides I shall conceive that your Majesty out of your great wisdom and depth doth see those things which I see not.

"Now therefore, not to hold your Majesty with many words, which do but drown matter; let me most humbly desire of your Majesty to take into your royal consideration, that your state is at this time not only in good quiet and obedience but in good affection and disposition; your Majesty's prerogative and authority have risen some just degrees above the horizon more than heretofore, which hath dispersed vapours; your justices of peace, which is the body of the gentlemen of England, grow to be loving and obsequious, and to be weary of the humour of ruffling; all mutinous spirits grow to be a little poor and to draw in their horns, and not the less for your Majesty's disauthorising the man I now speak of.

"Now then I reasonably doubt that if there be but an opinion of his coming in with the strength of such an alliance, it will give a turn and relapse in men's minds unto the former state of things, hardly to be holpen; to the great weakening of your Majesty's service.

"Again, your Majesty may have perceived that as far as it was fit for me in modesty to advise, I was ever for a parliament, which seemeth to me to be *cardo rerum* or *summa summarum* for the present occasions;—"

B.

Mark that.

A.

Yes, I see.

"—but this my advice was ever conditional, that your Majesty should go to your parliament with a council united and not distracted; and that, your Majesty will give me leave never to expect, if that man come in; not for any difference of mine own, for I can be *omnibus omnia* for your Majesty's service, but because he is by nature insociable, and by habit popular, and too old now to take a new ply; and men begin already to collect, yea and to conclude, that he that raiseth such a smoke to get in will set all on fire when he is in.

"It may please your Majesty now I have said I have done; and as I think I have done a duty not unworthy of the first year of your last high favour, I most humbly pray your Majesty to pardon me if in anything I have erred, for my errors shall

always be supplied by obedience. And so I conclude with my prayers for the happy preservation of your person and state,

"Your Majesty's most humble, bounden, and most devoted servant,

"FR. BACON, C.S.

"Gorhambury, July 25, 1617."

Why, there is no symptom of *intoxication* in this, at any rate; nor of an overweening estimate of his influence with the King.

B.

No: nor, I think, of uncalled-for interference merely for the purpose of troubling his enemy's house. He certainly wanted to keep Coke out of the Council; but as certainly that was a matter in which the state was interested, and himself interested as a Councillor of state.

A.

His objections to Coke in point of state policy happened to coincide with his personal objections.

B.

Not "*happened* to coincide:" the personal difference had grown out of the difference in policy, and was inseparably connected with it. If Bacon could have agreed with Coke in Council, he would have agreed with him well enough in society.

But as the reviewer tells the story, you would think that Bacon acted at any rate *inconsistently*, and was certainly wrong in one way,—either first in interfering to dissuade the match or afterwards in consenting to further it. Yet where is the inconsistency? He surely had a right to interfere by advice in such a matter; to interfere by authority he certainly had no right. If he thought it would be bad for the King, for Buckingham, and for the country, that the match should proceed,—how did he exceed his duty as a friend to the one and a Councillor to the other in advising them to discourage it? When he found that in spite of his advice they were both determined that

it should go on, what duty did he betray in endeavouring to reconcile the mother to it? What he most wished was that it should be broken off, and he advised Buckingham and the King to break it: when that might not be, his next wish was that it should be brought about with as much consent and as little scandal as possible; and he offered himself as a mediator. In consenting to further it when his advice was rejected, he did not recant his opinion; he only fulfilled his promise.

A.

Perhaps so; but I wish he had had nothing to do with it. It does not seem to have been a creditable affair to any of the parties concerned.

B.

To the parties immediately concerned it may have been discreditable; that is, it was a marriage of wealth to greatness; what we call a "good" match for both parties; mercenary on one side, ambitious on the other. But I cannot see that any of the discredit attaches to *Bacon's* part in it. "Good" as the match was, his objections were good too; and if for fear of giving offence he had shrunk from urging them, and so had "had nothing to do with it," it would have been more difficult to excuse him.

A.

But let me hear the story to the end; for certainly when I read the passage before, I thought he made but a sorry figure in the business. There must be something worse coming.

"Having given these proofs of contrition, he ventured to present himself before Buckingham. But the young upstart did not think that he had yet sufficiently humbled an old man who had been his friend and his benefactor,—who was the highest civil functionary in the realm, and the most eminent man of letters in the world. It is said that on two successive

days Bacon repaired to Buckingham's house,—that on two successive days he was suffered to wait in an antechamber among foot-boys, seated on an old wooden box, with the great seal of England at his side, and that when at length he was admitted, he flung himself on the floor, kissed the favourite's feet, and vowed never to rise till he was forgiven. Sir Anthony Weldon, on whose authority this story rests, is likely enough to have exaggerated the meanness of Bacon and the insolence of Buckingham—"

B.

I object to Sir Anthony Weldon's testimony altogether. He is a man of whom we know nothing but that he was a court scandal-monger, a lover of filth, a circulator of slander. That he is a writer without veracity who delights in disparagement, the most superficial reader may easily satisfy himself. A closer inspection will soon show that he is capable of gross and circumstantial misrepresentation. You will never get at the truth by taking the stories told by such men and making abatements and allowances, as if they were only exaggerations of the truth. There is no reason to believe that they have any truth in them.

A.

Wait one moment.

"—but it is difficult to imagine that so circumstantial a narrative written by a person who avers that he was present on the occasion can be wholly without foundation."

B.

It may not be wholly without foundation; yet it may be wholly untrue for all that But why is it difficult to imagine that it was "wholly without foundation"? Because it is "circumstantial"? When, I should like to know, was a man at a loss for circumstances who did not care whether he told the truth? When John Thorpe wished to satisfy Catherine Morland that the Tilneys would not call, he averred that he had himself, as he turned into

Broad Street, seen Tilney driving a smart-looking girl in a phaeton with chestnuts (very pretty cattle too) up the Lansdowne Road, and had heard him halloo to a man who was just passing by on horseback that they were going as far as the Wick Rocks: which so circumstantial narrative was nevertheless wholly without foundation. Or if you prefer an example from real history, Sir Anthony Weldon himself may supply you. His narrative of the manner in which the seals were transferred from Ellesmere to Bacon, with Buckingham's message and Bacon's answer, is as circumstantial as this, but it misrepresents the transaction from beginning to end, in every material feature.

A.

"And unfortunately there is little in the character either of the favourite or of the Lord Keeper to render the narrative improbable."

B.

As to the character of the Lord Keeper, that is still *sub judice:* and all I can say is, that up to this time, his fifty-seventh year, he has not been convicted of doing anything which can justify any man in thinking it likely that he should have behaved thus.

For Buckingham, what it was likely or unlikely that he should do it is not easy to judge. His character was scarcely formed, was undergoing the severest of all trials, and might be changing every day. But of the relation which subsisted from first to last between him and Bacon we can judge very well, from the long series of letters which passed between them, written in all varieties of fortune, temper, and occasion. Now all we know of their mutual demeanour does certainly to me render this narrative extremely improbable. Buckingham showed himself on more than one occasion very touchy, resentful, angry, and unjust towards Bacon; but he was always a gentleman addressing a gentleman: Bacon's language to him was never on the most trying occasions otherwise than dignified

and noble; and when it approached nearest to complaint, entreaty, or expostulation, it was that of a man forbearing to give utterance to a just sense of injury.

A.

Well, but *how far* do you discredit Weldon's narrative? Have you any doubt that such an interview took place?

B.

By no means. Bacon, we may be sure, would lose no time in seeking an interview. And we know that on the 21st or 22nd of September 1617 an interview did in fact take place, in which he found Buckingham deeply offended, but, "upon offer of submission unto him and in writing if he would have it," (what the nature of the proffered submission was we are not further informed,) left him reconciled. Nay, I will go further. I can believe if necessary that Bacon had to wait some time in the antechamber, where others waited; and even that he sat (there being no woolsack in the room) upon a wooden box: I should think but poorly of a man who could not sit upon a wooden box without losing his self-respect. And so much Weldon may have seen. But who told him what passed at the interview? for he does not "aver," and it is not likely, that he was admitted at the same time. Upon that point, which includes all the "meanness and insolence," he must have spoken by report or by guess; and when you remember that Macaulay himself described Bacon as "abasing himself to the dust" and "bemoaning himself in language suited to a convicted thief," upon no more ground in fact than a letter of respectful justification; you may easily believe that this description of Weldon's was founded upon nothing more than a dignified expostulation. Not but that in this point also I can believe Bacon to have been placed in a position which did not properly belong to him. As the caprice of fortune and the accidents of the time had put the greater power into the less worthy hand, so I can believe it had put the two ministers into wrong parts,

making Buckingham play the forgiver and Bacon the suppliant for forgiveness:—

> "Forgive me this my virtue:
> For in the fatness of these pursive times
> Virtue itself of Vice must pardon beg,
> Yea curb and woo for leave to do him good."

But until I hear it contradicted by some better witness than Weldon, I shall please myself with thinking that they both behaved like high-bred gentlemen, as they both were. In such matters, a little exaggeration makes all the difference; and you really must excuse me from believing upon the uncorroborated testimony of a detected slanderer,—testimony which he set down from recollection long after the event, and never dared to publish,—I say you must excuse me from believing upon such testimony, *anything whatever*.

A.

Perhaps you are in the right. But here is a little more.

"It is certain that a reconciliation took place on terms humiliating to Bacon, who never more ventured to cross any purpose of anybody who bore the name of Villiers. He put a strong curb on those angry passions which had for the first time in his life mastered his prudence. He went through the forms of a reconciliation with Coke, and did his best by seeking opportunities of paying little civilities, and by avoiding all that could produce collision, to tame the untamable ferocity of his old enemy."

B.

With regard to the curbing of angry passions, as I do not find that he had been actuated by them in this affair, I need say nothing. Whether he was to blame for not crossing the Villierses, I cannot judge without knowing upon what occasion he could have done any good by crossing them. And for his endeavours to tame Coke, I do not find that he changed in any way the general tenour of his conduct towards him. Bacon had at all times treated Coke

with respect, though he had never feared, and had often had occasion to face him. He had always thought him a bad Councillor, and I am not aware that he ever affected to think him a good one.

But though I do not believe that this experience made him alter his course, I dare say it made him more cautious in picking his steps. For it is quite true that his interference in this matter, unexceptionable as it seems to have been in motive, manner, and object, did deeply offend both Buckingham and the King; so deeply, that he had some difficulty in appeasing them. It happened during the first six months after his elevation to the woolsack, before anything had occurred to shake their confidence in his affection; and showed at once how insecure was his hold upon their favour, and how careful he must be in expressing himself if he meant to retain the power of serving them. You are not to be surprised therefore if few more *letters* are to be found of expostulation or contrary advice. It was absence and dealing by letter that had caused all this misunderstanding. If his duty compelled him to submit unpalatable advice afterwards, he would naturally take care to do it face to face; and so the record would not remain. Whether therefore he did interfere as often as he ought, it is impossible to say. He was never put upon his defence on that charge. But even if it should appear that he did not, yet you must consider in how delicate a position he stood, and how hard it was even for him (much more for you or me) to know how far it was fitting that he should interfere. To hold him responsible for the proceedings of the government, except such as were taken by his advice, (seeing his authority was so far from paramount,) is manifestly unreasonable. To hold him responsible for not always protesting where he disapproved, is hazardous; for it is clear from this transaction that a resolute opposition to all courses which he disliked would have been the certain way to deprive him of all the power he had; and whether that would have been, or seemed to him to be, a good thing for the country,—remembering the dangers which lay ahead and the policy which he was

labouring to introduce as "*summa summarum* for the present occasions,"—I leave you to consider.

A.

You said that before. And I admit that it was a case which required nice handling, and that we can judge but imperfectly what was best. That course was no doubt the most patriotic which promised to get most things that were for the good of the country *done*. Who can tell which that was? Perhaps the fairest way after all in such a case is to judge a man according to the general ends which he wished to bring about. And to Bacon's general ends, so far as they have hitherto appeared, I have certainly no exception to take.

B.

Then proceed once more.

A.

"In the main however, his life, while he held the Great Seal, was, in outward appearance, most enviable. In London he lived with great dignity at York House, the venerable residence of his father. Here it was that in January 1620 he celebrated his entrance into his sixtieth year amidst a splendid circle of friends. He had then exchanged the appellation of Keeper for the higher title of Chancellor. Ben Jonson was one of the party, and wrote on the occasion some of the happiest of his rugged rhymes. All things, he tells us, seemed to smile about the old house,—'the fire, the wine, the men.' The spectacle of the accomplished host, after a life marked by no great disaster, entering on a green old age, in the enjoyment of riches, power, high honours, undiminished mental activity, and vast literary reputation, made a strong impression on the poet, if we may judge from those well-known lines—

"'England's high Chancellor, the destined heir
In his soft cradle to his father's chair;
Whose even thread the Fates spin round and full,
Out of their choicest and their whitest wool.'"

"In the intervals of rest which Bacon's political and judicial functions afforded, he was in the habit of retiring to Gorhambury. At that place his business was literature, and his favourite amusement gardening, which in one of his most pleasing essays he calls 'the purest of human pleasures.' In his magnificent grounds he erected, at a cost of ten thousand pounds, a retreat, to which he repaired when he wished to avoid all visitors and to devote himself wholly to study. On such occasions a few young men of distinguished talents were sometimes the companions of his retirement. And among them his quick eye soon discerned the superior abilities of Thomas Hobbes. It is not probable however that he fully appreciated the powers of his disciple, or foresaw the vast influence, both for good and for evil, which that most vigorous and acute of human intellects was destined to exercise on the two succeeding generations.

"In January 1621 Bacon had reached the zenith of his fortunes. He had just published the *Novum Organum;* and that extraordinary book had called forth the warmest expressions of admiration from the ablest men in Europe. He had obtained honours of a widely different kind, but perhaps not less valued by him. He had been created Baron Verulam. He had subsequently been raised to the higher dignity of Viscount St. Albans. His patent was drawn in the most flattering terms, and the Prince of Wales signed it as a witness. The ceremony of investiture was performed with great state at Theobalds, and Buckingham condescended to be one of the chief actors. Posterity has felt that the greatest of English philosophers could derive no accession of dignity from any title which James could bestow; and in defiance of the royal letters patent, has obstinately refused to degrade Francis Bacon into Viscount St. Albans.

B.

And yet posterity obstinately insists on calling him *Lord* Bacon; a title to which he never had any right, except in virtue of the office in which according to the reviewer he so disgraced himself.

A.

Yes; this is a flourish,—very idle but very innocent: not

worth quarrelling about. By the way, why *do* we all call him Lord Bacon?

B.

I suppose because Bacon was the only proper name by which, so long as he continued a subject of popular talk, he was distinguished. While his proper title was "Lord Verulam," he was always spoken of as "my Lord Chancellor," simply. After he ceased to be "my Lord Chancellor" and was called "Lord St. Albans," he was so little before the public that the popular ear never grew familiar with his new title. If a man spoke of the Lord St. Albans, he had to explain that he meant the Lord Chancellor Bacon. And so he came to be popularly spoken of as "Lord Bacon,"—merely for shortness. Some people maintain that he was called "Lord Bacon" as soon as he became Lord Keeper, just as Coke was called "Lord Coke." But though it was customary to give the title to the Common Law Judges, it was never given to the Lord Keepers or Lord Chancellors. Who ever called Bacon's father "Lord Bacon?" Who ever heard of Lord Bromley, Lord Hatton, or Lord Puckering, for Sir Thomas, Sir Christopher, or Sir John? In the same way and for the same reason, posterity has refused to degrade Lord Ellesmere into Viscount Brackley.—But, as you say, it is not worth while to quarrel with so innocent a flourish. Here is graver matter coming, I see; another recapitulation; which I must take the liberty of calling to a strict account upon every item. And there we will end for to-night.

A.

"In a few weeks was signally brought to the test the value of those objects for which Bacon had sullied his integrity—"

B.

Say "sullied his *reputation*," and I will let it pass; denying only that it was done *for* those objects. It is true that he had brought his integrity into just *suspicion;* but it

remains to be proved that he ever violated it; and that is a question which we have reserved to be discussed presently.

A.

"—had resigned his independence—"

B.

In one sense he had; but not in the bad sense here intended. He had undertaken duties which could only be performed through other men, or in conjunction with them. He had been in "great place"; and he knew before he took it that "men in great place are thrice servants: servants of the sovereign or state; servants of fame; and servants of business: so as they have no freedom; neither in their persons, nor in their actions, nor in their times."* In that sense I admit that he had resigned his independence.

A.

"—had violated the most sacred obligations of friendship and gratitude—"

B.

Alluding to the case of Essex. Upon that charge we have freely acquitted him; and agreed that he had only preferred the more sacred obligation to the less sacred, when both could not be performed.

A.

Yes: that item must be struck out.

"—had flattered the worthless—"

B.

Had praised the King for the merits he possessed; and expressed for Buckingham the affection which he felt, and which Buckingham had very well deserved of him. If affection ought to be in proportion to benefits *received*

* Essay on Great place: first published in 1612.

(which is the reviewer's doctrine, though not mine), he owed more to Buckingham than ever he did to Essex.

A.

I agree to strike out that also.

"—had persecuted the innocent—"

B.

Alluding, I suppose, to the case of Oliver St. John. Upon that also we have acquitted him.

A.

Yes.

"—had tampered with judges—"

B.

Alluding to the case of Peacham.

A.

Yes; you effectually cleared him there.

"—had tortured prisoners—"

B.

Alluding again to the case of Peacham—say "had been present at the examination of a prisoner with torture."

A.

Yes. How the bubbles burst!

"—had plundered suitors—"

B.

Had received presents from suitors: I admit so much: the rest belongs to the question which we reserve.

A.

"—had wasted on paltry intrigues all the powers of the most

exquisitely constructed intellect that has ever been bestowed on any of the children of men."

B.

Alluding to—I hardly know what; unless it be the Villiers' match, which we have just discussed. I remember nothing else in the nature of an "intrigue" that the reviewer has charged him with. And we have not been able to make out that in this he acted unworthily or that his part in it did really partake at all of the character of an intrigue.

A.

Certainly not: and so ends this brilliant peroration; ends and goes out like so many bubbles.

B.

A very "yeasty collection." Strike out all the items that have no substance in them, and you leave nothing behind.

A.

A ragged remnant, I allow; a very dirty scum. But let us finish the paragraph.

"A sudden and terrible reverse was at hand. A parliament had been summoned. After six years of silence, the voice of the nation was again to be heard. Only three days after the pageant was performed at Theobalds in honour of Bacon, the houses met."

B.

We must leave the parliament for another evening; and we will then go through with it at once; for though you will probably wish to know more of what Bacon had really been about during the four years through which we have hurried after the reviewer this evening, we had better inquire first into the nature and extent of his real offence. If I succeed in convincing you that the object which

occupied him during his Chancellorship was not merely plunder, the question will naturally arise whether traces can be discovered of any other objects more akin to those which he had formerly been pursuing; and I hope it will appear that this page of his life was not one total blot, however ineffaceable be the great blot which he suffered to fall upon it.

EVENING THE SEVENTEENTH.

A.

Here are still sixteen pages more! Please to remember that time flies.

B.

Read on then: I shall have fewer occasions to interrupt you now; for in these latter pages the reviewer enjoys so easy a triumph over Mr. Montagu's *theory* of Bacon's case, that he is content to take the facts almost as he finds them. The case itself however, as I understand it, his arguments pass by on the right hand and on the left; and I am quite willing to let them go. I will stop none but such as seem to threaten my own position; and to save time, I will tell you at once what that is. I think that Bacon *was* guilty of corruption; that he had not the means of clearing himself; that the sentence pronounced against him, though severe, was not unjust; that his act moreover was not only in law indefensible, but in morals culpable, and more culpable in him than it would have been in another man; that he had, in short, allowed himself to do that which he knew ought not to be done. To this extent he himself pleaded guilty, and I plead guilty for him; and so much of Macaulay's reasoning as pretends to establish no more than this, I will let pass unquestioned; however confused, exaggerated, puerile, or inconclusive, I may feel it to be.

But on the other hand I think that Bacon's act, though criminal, was a political rather than a moral, and (if I may so speak) an artificial rather than a natural crime. I mean that it was one of those acts which are declared and *made* criminal, because they are likely to lead to crime; not criminal *per se*, as including and presupposing crime actually committed or intended; an act therefore from which, though rightly forbidden and punished, the conscience would not naturally and necessarily recoil. I do not call it a sin of ignorance; it was more than that; but I think it may be called a sin of *inattention;* and if we allow a distinction between vice and frailty, may be classed among the frailties.

A modern illustration will make my meaning clearer. Some six years ago, a candidate for a seat in parliament might follow the practice of his ancestors in giving a dinner to his constituents, without meaning thereby to influence corruptly a single vote; therefore with perfect innocence. But in the year 1842, the law, finding that this ancestral practice did in many cases *lead to* corruption, decided that it should hereafter be considered as an act of corruption in itself: where a dinner was given, corruption was to be *presumed*. Since that act was passed, every candidate who gives a dinner is in law guilty of corruption; and even in morals, (unless he disapproves of the act,) he is guilty of an offence; for he is allowing himself to do that which he believes ought not to be done. Yet for all that, he may still give the dinner without *intending* anything wrong. He may conform to the old practice only because the omission of it would be esteemed ungracious, illiberal, unthankful, or unpopular, without meaning or wishing to purchase any man's vote by it,—without a single thought of bribery or corruption entering his head. In such a case, his moral offence is that he conforms to a practice which tends to evil, yet of the evil itself to which the practice tends, his conduct may be absolutely free.

A.

You mean that for an extreme case?

B.

Yes. I suppose an extreme case that you may see the distinction I make to be a real one. In practice you will find the moral offence varying through every shade of culpability, from none at all to the full measure.

In Bacon's case then, after we have admitted that he acquiesced in a bad practice, and that that was a fault, the question will be, how much of what was bad in the practice his conduct involved: a question which the reviewer will not much help us to answer.

My meaning will be shown more clearly when we come to the point; but this will do by way of preface.

A.

"Want of money had, as usual, induced the King to convoke his parliament. But it may be doubted whether, if he or his ministers had been at all aware of the state of public feeling, they would not have tried any expedient, or borne with any inconvenience, rather than have ventured to face the deputies of a justly exasperated nation. But they did not discern these times. Indeed almost all the political blunders of James, and of his more unfortunate son, arose from one great error. During the fifty years which preceded the Long Parliament, a great and progressive change was taking place in the public mind. The nature and extent of this change was not in the least understood by either of the first two kings of the house of Stuart or by any of their advisers. That the nation became more and more discontented every year,—that every House of Commons was more unmanageable than that which preceded it,—were facts which it was impossible not to perceive. But the court could not understand why these things were so. The court could not see that the English people and the English government, though they might once have been well-suited to each other, were suited to each other no longer,—that the nation had outgrown its old institutions, was every day more uneasy under them, was pressing against them, and would soon burst through them. The alarming phenomena, the existence of which no sycophant could deny, were ascribed to every cause except the true. 'In my first parliament,' said James, 'I was a novice. In my next, there was a kind of beasts called *under-*

takers,' and so forth. In the third parliament he could hardly be called a novice, and those beasts, the *undertakers*, did not exist. Yet his third parliament gave him more trouble than either the first or the second."

B.

A full discussion of the questions raised in this passage, though not without interest as regards Bacon, would lead us too far away. But I must just stop you to suggest, that although want of money may have been the sole thing which induced the King to take Bacon's advice at last and call a parliament, it was by no means the sole thing which induced Bacon to give that advice. What I have called "the harmonious adjustment of the relation between the Crown and the Commons" had been with him for years a question of anxious consideration, as a thing "of inestimable importance"; the "*cardo rerum*," the "*summa summarum*," the "cause of causes." I cannot therefore allow him to be included among the advisers who did not understand the nature of the change which was going on. He knew well enough that Privilege was grown too big a boy to be ruled as of old by Prerogative; that a new spirit had arisen which must be conciliated, not overborne; that in order to conciliate it, all reasonable demands must be conceded, all necessities betraying weakness dissembled, all questions leading to collision accommodated; and that only by taking the lead in popular and patriotic measures could the Crown look to establish and continue its authority. He knew too that the time had come when *the people must be appealed to as a party in the state*. At least I can infer no less from an expression dropped by him in a letter to Buckingham about three months before the Houses met;—an expression so remarkable that it deserves to be brought into the light. The occasion was this: He had submitted to the King a draft of a proclamation for the parliament; to which the King objected as containing "matter of state" and "reasons," "whereof (he said) the people were not capable." For this, Bacon (acquiescing in the objection on

another ground) lightly excused himself in these words: "Neither would I have thought," he says, "of inserting matter of state for the vulgar, *but that nowadays there is no vulgar, but all statesmen;*"—an observation which seems to imply a distinct perception of the change which was taking place in the public mind.

Be that as it may, the feeling that the relation between the two powers was out of joint, that by dexterous management it might with little hazard be set right again, and that at all hazards set right it must be,—this feeling had been the ground and motive of all Bacon's political advice since Salisbury's death. The experiment had been long put off, for reasons easily understood; but the case of the Palatinate had now rendered it indispensable to make the trial at once, and had given at the same time a valuable opportunity. Here was a great cause in which the government and the nation were going the same way, and the people had no motive for quarrelling with their existing institutions; for this cause a benevolence had already been levied; and though it was an infringement of the very function of which the Commons were most tenacious, they were so far from making a grievance of it that they would have whipped any man from the pillory in Westminster to the pillory in Cheapside who dared to cross it with a word. Supplies were voted with cordial alacrity; no delay made, no questions asked, no conditions required. Points that threatened to breed difference were by the Commons themselves specially avoided. For the first fortnight no trace can be found in the Journals of any spirit of opposition or discontent; nor was it in any such spirit that the questions were stirred which caused so much trouble afterwards. It was in inquiring by the King's own desire into the causes of the scarcity of gold and silver, that the patent for gold and silver thread was first brought in question. It was in pursuing an investigation concerning the courts of justice, apparently with the full concurrence of the government, and certainly with Bacon's full permission "for any man to speak freely anything concerning *his* court," that the charge of corruption was brought up against

Bacon himself. And as these unexpected and alarming disclosures had not been preceded by any symptom of turbulence or opposition to the government, so they were followed up with a cautious anxiety to avoid disagreement. The King was ostentatiously cleared from all imputation of connection with the abuses; the favourite's name was touched with all possible tenderness; never indeed since his accession had James been favoured by his faithful Commons with anything so like adulation as the treatment he now met with from these "deputies of a justly exasperated nation."

A.

Then the inquiry into the abuses was conducted temperately, I suppose, and tenderly. I thought you spoke a little while ago of a "raging House of Commons and an alarmed House of Lords?"

B.

So far as the King's name or Buckingham's was touched, the inquiry was prosecuted with extreme tenderness: the Commons feared nothing so much as a breach with *them*. But it does not follow that the other offenders who could be proceeded against without touching the government would come in for their share of the lenity. Rather the contrary. Undue partiality to one almost always involves undue severity to some other. The sudden disclosure of these things naturally produced a sudden blaze of popular excitement. And though I have no complaint to make of the manner in which the Houses proceeded; for the offences were fair game, and it was quite right that they should be hunted down; yet it cannot be said that they were in an indulgent humour, or in a temper to take a just measure of moral offences. How far they were from *that*, indeed, you may judge from the fact that the memorable and monstrous sentence upon poor old Edward Floyde was the distinction of this very session; being agreed to by the Commons only

three days before Bacon was sentenced, and enforced by the Lords in a still more monstrous shape only three weeks after.—No. Their blood was up; and where there was nothing to restrain them they gave it full way, as you will see.

A.

"The parliament had no sooner met than the House of Commons proceeded, in a temperate and respectful, but most determined manner, to discuss the public grievances. Their first attacks were directed against those odious patents, under cover of which Buckingham and his creatures had pillaged and oppressed the nation. The vigour with which these proceedings were conducted spread dismay through the court. Buckingham thought himself in danger, and in his alarm had had recourse to an adviser who had lately acquired considerable influence over him,—Williams, Dean of Westminster. This person had already been of great use to the favourite in a very delicate matter. Buckingham had set his heart on marrying Lady Catherine Manners, daughter and heiress of the Earl of Rutland. But the difficulties were great. The Earl was haughty and impracticable, and the young lady was a catholic. Williams soothed the pride of the father, and found arguments which, for a time at least, quieted the conscience of the daughter. For these services he had been rewarded with considerable preferment in the church: and he was now rapidly rising to the same place in the regard of Buckingham, which had formerly been occupied by Bacon.

"Williams was one of those who are wiser for others than for themselves. His own public life was unfortunate, and was rendered unfortunate by his strange want of judgment and self-command at several important conjunctures. But the counsel which he gave on this occasion showed no want of worldly wisdom. He advised the favourite to abandon all thoughts of defending the monopolies—to find some foreign embassy for his brother Sir Edward, who was deeply implicated in the villanies of Mompesson—and to leave the other offenders to the justice of parliament. Buckingham received this advice with the warmest expressions of gratitude, and declared that a load had been lifted from his heart. He then repaired with Williams to the royal presence. They found the King engaged in earnest consultation with Prince Charles. The plan of operations

proposed by the Dean was fully discussed, and approved in all its parts.

"The first victims whom the court abandoned to the vengeance of the Commons were Sir Giles Mompesson and Sir Francis Michell. It was some time before Bacon began to entertain any apprehensions. His talents and his address gave him great influence in the House, of which he had lately become a member,—as indeed they must have done in any assembly. In the House of Commons he had many personal friends and many warm admirers. But at length, about six weeks after the meeting of parliament, the storm burst.

"A committee of the Lower House had been appointed to inquire into the state of the courts of justice. On the 15th of March the chairman of that committee, Sir Robert Philips, member for Bath, reported that great abuses had been discovered. 'The person,' said he, 'against whom these things are alleged is no less than the Lord Chancellor,—a man so endued with all parts, both of nature and art, as that I will say no more of him, being not able to say enough.' Sir Robert then proceeded to state, in the most temperate manner, the nature of the charges. A person of the name of Aubrey had a case depending in Chancery. He had been almost ruined by law-expenses, and his patience had been exhausted by the delays of the court. He received a hint from one of the hangers-on of the Chancellor, that a present of 100*l.* would expedite matters. The poor man had not the sum required. However, having found out an usurer who accommodated him with it at high interest, he carried it to York House. The Chancellor took the money, and his dependents assured the suitor that all would go right. Aubrey was, however, disappointed; for, after considerable delay, 'a killing decree' was pronounced against him. Another suitor of the name of Egerton complained that he had been induced by two of the Chancellor's jackals to make his lordship a present of 400*l.*; and that nevertheless he had not been able to obtain a decree in his favour. The evidence to these facts was overwhelming. Bacon's friends could only entreat the House to suspend its judgment, and to send up the case to the Lords in a form less offensive than an impeachment."

B.

Stop: I object to the word *jackals*. It assumes the thing of which I require some proof; viz. that Bacon

employed means to procure or bargain for these gratuities beforehand; a thing of which I do not believe any proof can be produced. The two jackals were Sir George Hastings and Sir Richard Young; gentlemen of good reputation, and members of parliament; who happening to be common friends to the suitors and to the Lord Chancellor, were naturally employed by the suitors to present their gifts. Sir George Hastings admitted that he had advised the present of the hundred pounds, and had delivered it as from Aubrey in acknowledgment of former favours. Sir Richard Young admitted that he had delivered the four hundred to Bacon as a present from Egerton, to buy hangings for the furniture of his new house. But that Bacon had in any way direct or indirect *solicited* these presents was not intimated by either of these gentlemen, and is here insinuated I believe for the first time.

And by the way,—now that we come to speak of these money-presents,—I would just caution you against a misapprehension into which you might naturally fall. In those days there was none of that sordid character attached to presents in *money* which there is now. Nowadays, a gentleman will scorn to take a present in money who has no objection to a dessert-service. A First Lord of the Treasury may now gratify a useful supporter with an appointment for his son or his friend worth a hundred a year; but cannot offer him a hundred guineas. A company of manufacturers, being thankful to a Chancellor of the Exchequer for taking off a tax, may present him with a choice specimen of their manufacture to adorn his dining or drawing-room; but if they were to offer him the value of it in a cheque, he would take it as an insult. Now in Bacon's time no such distinction was felt between money and money's worth. A bishop of Durham, wishing to express his gratitude to Burghley for "extraordinary furtherance" in obtaining his bishopric, and "not finding any office or other particular, presently void," which was fit to offer, presented him with a hundred pounds in gold. And if you will look through any of the lists of the new-year's gifts presented to Queen

Elizabeth by her courtiers and great Councillors, you will find that most of them were in gold,—in sums of ten or twenty pounds each. However wrong it was therefore for a Judge to accept presents from suitors in any shape, it was not more wrong because they came in the undisguised shape of cash. It was as a Judge only, not as a gentleman, that Bacon transgressed. And in the popular estimate (though not in a true judgment) of his offence, you will find I think that this distinction makes some difference; for we are apt to mix up with our feeling that the practice of receiving gifts of any kind was *corrupt*, (which is true,) a feeling that the practice of taking *money* was *ungentlemanly*, which is a mistake.

A.

Perhaps we are.

"On the 19th of March the King sent a message to the Commons, expressing his deep regret that so eminent a person as the Chancellor should be suspected of misconduct. His Majesty declared that he had no wish to screen the guilty from justice, and proposed to appoint a new kind of tribunal, consisting of eighteen commissioners, who might be chosen from among the members of the two houses, to investigate the matter. The Commons were not disposed to depart from the regular course of proceeding. On the same day they held a conference with the Lords, and delivered in the heads of the accusation against the Chancellor. At this conference Bacon was not present. Overwhelmed with shame and remorse, and abandoned by all those in whom he had weakly put his trust, he shut himself up in his chamber from the eyes of men. The dejection of his mind soon disordered his body. Buckingham, who visited him by the King's order, 'found his Lordship very sick and heavy.' It appears, from a pathetic letter which the unhappy man addressed to the Peers on the day of the conference, that he neither expected nor wished to survive his disgrace. During several days he remained in his bed, refusing to see any human being. He passionately told his attendants to leave him,—to forget him,—never again to name his name,—never to remember that there had been such a man in the world. In the mean time fresh instances of corruption were every day brought

to the knowledge of his accusers. The number of charges rapidly increased from two to twenty-three. The Lords entered on the investigation of the case with laudable alacrity. Some witnesses were examined at the bar of the House. A select committee was appointed to take the depositions of others; and the inquiry was rapidly proceeding, when, on the 26th of March, the King adjourned the parliament for three weeks.

"This measure revived Bacon's hopes. He—"

B.

Wait a moment. The state of Bacon's mind when the storm first surprised him I shall have something to say about before we have done, but I will hear the whole of the reviewer's story first. At present I only wish to enter a protest against the assumption implied in these last words for which I find no sufficient warrant. "Abandoned by all those *in whom he had weakly put his trust.*" The King adjourned the parliament, and "this measure *revived Bacon's hopes.*" By this we are meant, I presume, to understand that Bacon had been proceeding in his bad ways in reliance upon the power of the King and Buckingham to protect him from the consequences; that he had expected them to suppress the prosecution in some arbitrary manner; and that he looked upon the adjournment of parliament as a step that way. Now my belief is, that the question whether the King and Buckingham would protect him in such a case had never occurred to Bacon before; for until he was thus put upon his defence, he had had no suspicion that he was personally vulnerable; that when it did occur to him, he neither asked nor wished for any arbitrary interposition of authority in his behalf, but merely for countenance in making his just defence; and that the adjournment of parliament had nothing to do with his hopes or fears (except in so far as delay might be an advantage), being merely the ordinary adjournment for the Easter recess; the time of which the King expressly left to their own choice; only suggesting a day for their re-

assembling, which was a week *earlier* than the day they fixed on.

With regard to the effect of the accusation upon Bacon's mind,—which it would be interesting to know, if we had any account upon which we could perfectly rely,—I do not know why the reviewer should have chosen from the two *contradictory* reports which were lying before him, the one which is anonymous * and professes to report only what "some say," without any mention of the other. All the other accounts which I have seen agree that he either was or pretended to be very ill. But that he "refused to see any human being," "told his attendants to leave him, never again to name his name," and so forth, is not hinted in any of them; and is scarcely consistent with the intention which he certainly then had to answer the charges in person.

The most credible account of his behaviour during these days—(we have none from any of those who were about him)—is given by our friend John Chamberlain, writing to Dudley Carleton on the 24th of March.

"It seems he doth either dissemble or not feel the ignominy that hangs over him, but carries himself as he was wont. Yet his friends give out that he is very sick, and so would move commiseration. . . . Divers do visit him daily, and the Lord Buckingham more than any; which the world thinks is not without a mystery; and many things are spoken that are not to be written."

That he was very sick however was true; so sick that he believed his life to be in immediate danger, and had therefore "sequestered his mind in great part from worldly matters, thinking of his account and answers in a higher court." And from this circumstance, avowed by himself and confirmed by other evidence which I will mention some other time, may have arisen the rumour which it suits Macaulay to make part of his narrative.

* The writer (whose name is not given by Mr. Montagu) was the Rev. Joseph Mead. He wrote from Christ's College, Cambridge; therefore cannot be taken for so good a witness as one who wrote from the spot.

A.

"He made the most of his short respite. He attempted to work on the feeble mind of the King. He appealed to all the strongest feelings of James,—to his fears, to his vanity, to his high notions of prerogative. Would the Solomon of the age commit so gross an error as to encourage the encroaching spirit of parliaments? Would God's anointed, accountable to God alone, pay homage to the clamorous multitude? 'Those,' he exclaimed, 'who now strike at your Chancellor will soon strike at the Crown. I am the first sacrifice. I wish I may be the last.' But all his eloquence and address were employed in vain."

Stay: tell me: were these Bacon's own words, or only such as Macaulay *supposes* for him? Some of them seem like his, but others particularly unlike.

B.

The last expressions, those within inverted commas, were reported as Bacon's own (but not till nearly forty years after) by Edward Bushel, then a lad of eighteen and one of Bacon's servants; but a very bad authority at best, and especially unworthy of credit here for two reasons: first, because the words are represented as having been spoken in a private interview between Bacon and the King, at which it is not to be believed that Bushel was present; secondly, because they are related by way of introduction to a speech which he says that Bacon had prepared for the parliament, though it is a manifest fabrication, and in fact only a puff of a project of his own. For these expressions however (though the anecdotes told by such a man deserve no credit) there may possibly have been some foundation. But the rest of the passage is a mere flourish, which like the enchanter's wand transmutes the whole into fiction. Bacon *may* have said something like what Bushel reports. But I will venture to assert that he said nothing in the remotest degree resembling what is here put into his mouth. Why he should have had recourse to his invention

here, I do not know; for though no reporter was present to take notes, we do in fact know the general effect of this interview upon very good authority. Macaulay had lying before him three separate and independent documents: first, Bacon's own memoranda of what he *intended* to say; secondly, the King's own message to the Lords declaring the substance of what he *did* say; thirdly, a letter from Bacon to the King reminding him of what he *had* said. And these three are in exact accordance with each other. How far they accord with the statement in the review you shall judge for yourself.

"Your Majesty can bear me witness" (says Bacon, writing on the 21st of April, five days after the interview), "that at my last so comfortable access *I did not so much as move* your Majesty, by your absolute power of pardon or otherwise, to take my cause into your hands and to interpose between the sentence of the House, and *according to mine own desire* your Majesty left it to the sentence of the House; and so was reported by my Lord Treasurer."

A.

What did the Lord Treasurer say, and when?

B.

On the 17th of April, the day after the interview, he reported to the Lords,

"That yesterday his Majesty admitting the Lord Chancellor to his presence, his Lordship desired that he might have a particular of those matters wherewith he is charged before the Lords of the House; for that it was not possible for him who passed so many decrees and orders in a year, to remember all things that fell out in them; and that this being granted, his Lordship would desire two things of his Majesty. 1. That where his answers should be clear to those things objected against him, his Lordship might stand upon his innocency. 2. Where his answer should not be so fair and clear, there his Lordship might be admitted to the extenuation of the charge; and where the proofs were full and undeniable,

his Lordship would ingenuously confess them and put himself upon the mercy of the Lords.

"Unto all which his Majesty's answer was, he referred him to the Lords of this House, and thereof his Majesty willed him to make report to their Lordships."

A.

That then agrees exactly with Bacon's statement. But it does not follow that this was *all* that passed. This is only the conclusion. Is there not, in the memoranda you speak of, some hint of the topic which Macaulay introduces?

B.

Of "Solomon encouraging the encroaching spirit of parliaments,"—"God's anointed paying homage to the clamorous multitude," &c? Not a syllable.

A.

Nor of any suggestion that the King might interpose between him and the sentence?

B.

None. He seems to have been meditating only a candid exposition of his case, and a submission of it to the King's pleasure.

A.

Indeed! Well?

B.

Well, the issue accordingly was, that the King referred him to the Lords; that Bacon upon a more advised consideration of the case, finding I suppose that he could not clear himself, resolved to abandon his defence, made a general submission, and desired to resign the seals; that the Lords, not being satisfied with his general submission, sent him a collection of the particular charges, requiring

his particular answer to each; and that he returned his answers accordingly.

It was not till all this was done that he ventured to ask the King, who was just then in high favour with both Houses, to interpose in his behalf. And, though we are again outrunning the review, you had better know at once what kind of interposition he desired and in what manner. The passage follows immedately upon that which I last read, from his letter of the 21st of April.

"But *now*," he proceeds, "if (not *per omnipotentiam*, as the divines speak, but *per potestatem suaviter disponentem*,) your Majesty will graciously save me from a sentence, *with the good liking of the House*, and that cup may pass from me, it is the utmost of my desires.

"This I move with the more belief, because I assure myself that if it be reformation that is sought, the very taking away the seal upon my general submission will be as much in example for these four hundred years as any further severity."

Still you see there is no hint of an appeal to the King's fears, vanity, or high notions of prerogative; no hint of a request for arbitrary interference.

A.

Not explicitly: but how without such interference could the King save him?

B.

That again he leaves to the King's own consideration.

"The means of this," he goes on, "I most humbly leave unto your Majesty. But surely I conceive that your Majesty opening yourself in this kind to the Lords Councillors, and a motion from the Prince after my submission, and my Lord Marquis using his interests with his friends in the House, may effect the sparing of a sentence; I making my humble suit to the House for that purpose, joined with the delivery of the seal into your Majesty's hands."

Such, so far as I can discover, was all the interposition in his behalf he ever wished for; such the object of his

appeal to the King; such the conditions upon which alone he thought himself entitled to ask for mercy. And how could he have acted more consistently with his original profession to the Lords on the 19th of March, that he "desired no privilege of greatness for subterfuge of guiltiness, but meant to deal fairly and plainly with them and put himself upon their honours and favours?"—how more consistently with all the professed principles of his life,—with loyalty, with patriotism, with love of justice, with love of truth, with true nobleness of mind? how in short more like himself, or how more unlike such a man as Macaulay takes him for?

A.

Certainly his portraits cease to look natural as soon as they are confronted with the original.—Anything more?

B.

No: I have no quarrel with the King. I think that if he could have averted the sentence "with the good liking of the House," it would have been a gracious and a wise act. But I do not know that this was practicable; * and *without* the good liking of the House, Bacon would not have advised him to attempt it. What follows therefore has nothing to say to me, nor I to it.

A.

"Indeed, whatever Mr. Montagu may say, we are firmly convinced that it was not in the King's power to save Bacon, without having recourse to measures which would have con-

* Sir Anthony Ashley, writing to Buckingham on the 12th of May, 1621, warns him of the danger of interceding in behalf of Bacon. "The rumour lately spread touching his Majesty's untimely pardon of the late Lord Chancellor's fine and imprisonment, with some other favours intended towards him (said to be procured by your Lordship's only intimation) hath exceedingly exasperated the rancour of the ill-affected; which albeit it be false and unlikely, because very unseasonable, doth yet serve the present turn for the increase of malice against you. I can but inform your Lordship of what I understand, you may please to make use thereof as yourself thinketh best." —Cabala, p. 2.

vulsed the realm. The Crown had not sufficient influence in parliament to procure an acquittal, in so clear a case of guilt. And to dissolve a parliament which is universally allowed to have been one of the best parliaments that ever sat, which had acted liberally and respectfully towards the Sovereign, and which enjoyed in the highest degree the favour of the people,—only in order to stop a grave, temperate and constitutional inquiry into the personal integrity of the first Judge in the kingdom,—would have been a measure more scandalous and absurd than any of those which were the ruin of the House of Stuart. Such a measure, while it would have been as fatal to the Chancellor's honour as a conviction, would have endangered the very existence of the monarchy. The King, acting by the advice of Williams, very properly refused to engage in a dangerous struggle with his people, for the purpose of saving from legal condemnation a minister whom it was impossible to save from dishonour. He advised Bacon to plead guilty, and promised to do all in his power to mitigate the punishment. Mr. Montagu is exceedingly angry with James on this account. But though we are, in general, very little inclined to admire that prince's conduct, we really think that his advice was, under all the circumstances, the best advice that could have been given.

"On the 17th of April the Houses reassembled, and the Lords resumed their inquiries into the abuses of the Court of Chancery. On the 22nd, Bacon addressed to the peers a letter, which Prince Charles condescended to deliver. In this artful and pathetic composition, the Chancellor acknowledged his guilt in guarded and general terms, and, while acknowledging, endeavoured to palliate it. This, however, was not thought sufficient by his judges. They required a more particular confession, and sent him a copy of the charges. On the 30th he delivered a paper, in which he admitted, with few and unimportant reservations, the truth of the accusations brought against him, and threw himself entirely on the mercy of his peers. 'Upon advised consideration of the charges,' said he, 'descending into my own conscience, and calling my memory to account so far as I am able, I do plainly and ingenuously confess that I am guilty of corruption, and do renounce all defence.'

"The Lords came to a resolution that the Chancellor's confession appeared to be full and ingenuous, and sent a committee to inquire of him whether it was really subscribed

by himself. The deputies, among whom was Southampton, the common friend many years before of Bacon and Essex, performed their duty with great delicacy. Indeed, the agonies of such a mind, and the degradation of such a name, might well have softened the most obdurate natures. 'My lords,' said Bacon, 'it is my act, my hand, my heart. I beseech your Lordships to be merciful to a broken reed.' They withdrew; and he again retired to his chamber in the deepest dejection. The next day the sergeant-at-arms and the usher of the House of Lords came to conduct him to Westminster Hall, where sentence was to be pronounced. But they found him so unwell that he could not leave his bed; and this excuse for his absence was readily accepted. In no quarter does there appear to have been the smallest desire to add to his humiliation. The sentence was, however, severe,—the more severe, no doubt, because the Lords knew that it would not be executed, and that they had an excellent opportunity of exhibiting, at small cost, the inflexibility of their justice, and their abhorrence of corruption. Bacon was condemned to pay a fine of forty thousand pounds, and to be imprisoned in the Tower during the King's pleasure. He was declared incapable of holding any office in the state, or of sitting in parliament, and he was banished for life from the verge of the court. In such misery and shame ended that long career of worldly wisdom and worldly prosperity!

"Even at this pass Mr. Montagu does not desert his hero. He seems indeed to think that the attachment of an editor ought to be as devoted as that of Mr. Moore's lovers; and cannot conceive what biography was made for,

> '. . . if 'tis not the same
> Through grief and through danger, through sin and through shame.'

He assures us that Bacon was innocent,—that he had the means of making a perfectly satisfactory defence,—that when he 'plainly and ingenuously confessed that he was guilty of corruption,' and when he afterwards solemnly affirmed that his confession was 'his act, his hand, his heart,' he was telling a great lie,—and that he refrained from bringing forward proofs of his innocence because he durst not disobey the King and the favourite, who, for their own selfish objects, pressed him to plead guilty."

B.

None of this, you will observe, applies to any argument of mine.

A.

No.

"Now, in the first place, there is not the smallest ground to believe that, if James and Buckingham thought Bacon had a good defence, they would have prevented him from making it. What conceivable motive had they for doing so? Mr. Montagu perpetually repeats, that it was their interest to sacrifice Bacon. But he overlooks an obvious distinction. It was their interest to sacrifice Bacon on the supposition of his guilt; but not on the supposition of his innocence. James was very properly unwilling to run the risk of protecting his Chancellor against the parliament. But if the Chancellor had been able, by force of argument, to obtain an acquittal from the parliament, we have no doubt that both the King and Villiers would have heartily rejoiced. They would have rejoiced, not merely on account of their friendship for Bacon, which seems, however, to have been as sincere as most friendships of that sort, but on selfish grounds. Nothing could have strengthened the government more than such a victory. The King and the favourite abandoned the Chancellor because they were unable to avert his disgrace, and unwilling to share it. Mr. Montagu mistakes effect for cause. He thinks that Bacon did not prove his innocence, because he was not supported by the court. The truth evidently is, that the court did not venture to support him, because he could not prove his innocence.

"Again, it seems strange that Mr. Montagu should not perceive that, while attempting to vindicate Bacon's reputation, he is really casting on it the foulest of all aspersions. He imputes to his idol a degree of meanness and depravity more loathsome than judicial corruption itself. A corrupt Judge may have many good qualities. But a man who, to please a powerful patron, solemnly declares himself guilty of corruption when he knows himself to be innocent, must be a monster of servility and impudence. Bacon was—to say nothing of his highest claims to respect,—a gentleman, a nobleman, a scholar, a statesman, a man of the first consideration in society, a man far advanced in years. Is it possible to believe that such a man would, to gratify any human being, irreparably ruin his own character by his own act? Imagine a grey-headed judge, full of years and honours, owning with tears, with pathetic assurances of his penitence and of his sincerity, that he has

been guilty of shameful malpractices,—repeatedly asseverating the truth of his confession, subscribing it with his own hand, submitting to conviction, receiving a humiliating sentence and acknowledging its justice,—and all this when he has it in his power to show that his conduct has been irreproachable! The thing is incredible. But if we admit it to be true, what must we think of such a man,—if indeed he deserves the name of man,—who thinks anything that kings and minions can bestow more precious than honour, or anything that they can inflict more terrible than infamy?

"Of this most disgraceful imputation we fully acquit Bacon. He had no defence; and Mr. Montagu's affectionate attempt to make a defence for him has altogether failed."

B.

I promised not to waste time in defending Mr. Montagu. Therefore I let all this pass, though I think it very unjust and very puerile. Mr. Montagu never meant to say that Bacon had the means of making "a perfectly satisfactory defence," but only that he might have said a great deal in palliation;—might have urged "excuses which, though legally of no value, yet tended to diminish the moral guilt of the crime; and which therefore, though they could not justify the Peers in pronouncing an acquittal, might yet incline" them to mitigate the severity of the sentence. This is Macaulay's own distinction; if you look back to the place where he pleads for Essex, you will find it stated in the very words I have used; though here he seems to overlook it altogether. He seems to forget that though a black man cannot be washed white, yet a white man may want washing. There can be no doubt that the popular impression of Bacon's offence would have been materially affected in his favour by such a defence as he might have made even upon his own principle of admitting every point in the charges which he could not honestly deny. But since I do not find that he *wished* to defend himself after he saw what the case really was,—"I had rather be a briber," he said, "than a defender of bribes,"—I am not concerned to press this point. All the facts which he confessed, you are to

understand me as admitting. I only stipulate that I am not to be called on to admit more, without fresh, distinct, and decisive evidence. The charges against him were investigated with diligent and fearless scrutiny. The full authority of both Houses was used to bring them out. As many as they considered upon the prosecutor's showing to be substantiated were collected into a formal instrument and presented to him for his answer. His answer, which was the *altera pars*, was accepted as "full and ingenuous." I say then that it is upon this answer that we must judge him. We have no right to assume that he was guilty of more offences than those with which, after so full and determined an investigation of the case, the Lords thought fit to charge him; or that he was more guilty in these than, in his confession thus accepted, he admitted himself to be.

A.

Certainly not.

"The grounds on which Mr. Montagu rests the case are two:—the first, that the taking of presents was usual, and—what he seems to consider the same thing,—not discreditable; the second, that these presents were not taken as bribes.

"Mr. Montagu brings forward many facts in support of his first proposition. He is not content with showing that many English judges formerly received gifts from suitors, but collects similar instances from foreign nations and ancient times. He goes back to the commonwealth of Greece, and attempts to press into his service a line of Homer and a sentence of Plutarch, which, we fear, will hardly serve his turn. The gold of which Homer speaks was not intended to fee the judges, but was paid into court for the benefit of the successful litigant; and the gratuities which Pericles, as Plutarch states, distributed amongst the members of the Athenian tribunals, were legal wages paid out of the public revenue. We can supply Mr. Montagu with passages much more in point. Hesiod, who, like poor Aubrey, had 'a killing decree' made against him in the chancery of Ascra, was so uncivil as to designate the learned persons who presided in that court as βασιλῆας δωροφάγους. Plutarch and Diodorus have handed down to the latest ages the respectable name of Anytus, the son of Anthemius, the first defendant who,

cluding all the safeguards which the ingenuity of Solon could devise, succeeded in corrupting a bench of Athenian judges. We are indeed so far from grudging Mr. Montagu the aid of Greece, that we will give him Rome into the bargain. We acknowledge that the honourable senators who tried Verres, received presents which were worth more than the fee-simple of York House and Gorhambury together; and that the no less honourable senators and knights who professed to believe in the *alibi* of Clodius, obtained marks still more extraordinary of the esteem and gratitude of the defendant. In short, we are ready to admit that before Bacon's time, and in Bacon's time, judges were in the habit of receiving gifts from suitors.

"But is this a defence? We think not. The robberies of Cacus and Barabbas are no justification for those of Turpin. The conduct of the two men of Belial who swore away the life of Naboth, has never been cited as an excuse for the perjuries of Oates and Dangerfield. Mr. Montagu has confounded two things which it is necessary carefully to distinguish from each other, if we wish to form a correct judgment of the characters of men of other countries and other times. That an immoral action is, in a particular society, generally considered as innocent, is a good plea for an individual who, being one of that society, and having adopted the notions which prevail among his neighbours, commits that action. But the circumstance that a great many people are in the habit of committing immoral actions, is no plea at all. We should think it unjust to call St. Louis a wicked man, because, in an age in which toleration was generally regarded as a sin, he persecuted heretics. We should think it unjust to call Cowper's friend, John Newton, a hypocrite and a monster, because, at a time when the slave-trade was commonly considered by the most respectable people as an innocent and beneficial traffic, he went, largely provided with hymn-books and handcuffs, on a Guinea voyage. But the circumstance that there are fifty thousand thieves in London is no excuse for a fellow who is caught breaking into a shop. No man is to be blamed for not making discoveries in morality,—for not finding out that something which everybody else thinks to be good is really bad. But if a man does that which he and all around him know to be bad, it is no excuse for him that others have done the same. We should be ashamed of spending so much time in pointing out so clear a distinction, but that Mr. Montagu seems altogether to overlook it.

"Now, to apply these principles to the case before us: let Mr. Montagu prove that, in Bacon's age, the practices for which Bacon was punished were generally considered as innocent; and we admit that he has made out his point. But this we defy him to do. That these practices were common, we admit. But they were common, just as all wickedness to which there is strong temptation always was, and always will be common. They were common, just as theft, cheating, perjury, adultery, have always been common. They were common, not because people did not know what was right, but because people liked to do what was wrong. They were common, though prohibited by law. They were common, though condemned by public opinion. They were common, because in that age law and public opinion united had not sufficient force to restrain the greediness of powerful and unprincipled magistrates. They were common, as every crime will be common when the gain to which it leads is great, and the chance of disgrace and punishment small. But though common, they were universally allowed to be altogether unjustifiable; and they were in the highest degree odious; and, though many were guilty of them, none had the audacity publicly to avow and defend them.

"We could give a thousand proofs that the opinion then entertained concerning these practices was such as we have described. But we will content ourselves with calling a single witness—honest Hugh Latimer. His sermons—preached more than seventy years before the inquiry into Bacon's conduct—abound with the sharpest invectives against those very practices of which Bacon was guilty, and which, as Mr. Montagu seems to think, nobody ever considered as blamable till Bacon was punished for them. We could easily fill twenty pages with the homely, but just and forcible rhetoric of the brave old bishop. We shall select a few passages as fair specimens, and no more than fair specimens, of the rest. '*Omnes diligunt munera.* They all love bribes. Bribery is a princely kind of thieving. They will be waged by the rich, either to give sentence against the poor, or to put off the poor man's cause. This is the noble theft of princes and magistrates. They are bribe-takers. *Nowadays they call them gentle rewards. Let them leave their colouring and call them by their Christian name—bribes.*' And again—'Cambyses was a great emperor, such another as our master is. He had many lord deputies, lord presidents, and lieutenants under him. It is a great while ago since I read the history. It chanced he

had under him in one of his dominions a briber, a gift-taker, a gratifier of rich men; he followed gifts as fast as he that followed the pudding, a handmaker in his office to make his son a great man, as the old saying is: Happy is the child whose father goeth to the devil. The cry of the poor widow came to the emperor's ear, and caused him to flay the judge quick, and laid his skin in the chair of judgment, that all judges who should give judgment afterwards should sit in the same skin. Surely it was a goodly sign, a goodly monument, the sign of the judge's skin. *I pray God we may once see the skin in England.*' 'I am sure,' says he in another sermon, 'this is *scala inferni*, the right way to hell, to be covetous, to take bribes, and pervert justice. If a judge should ask me the way to hell, I would show him this way. First, let him be a covetous man; let his heart be poisoned with covetousness. Then let him go a little further and take bribes; and, lastly, pervert judgment. Lo! here is the mother, and the daughter, and the daughter's daughter. Avarice is the mother: she brings forth bribe-taking, and bribe-taking perverting of judgment. There lacks a fourth thing to make up the mess, which, so help me God, if I were judge, should be *hangum tuum*, a Tyburn tippet to take with him; an it were the judge of the King's Bench, my Lord Chief Judge of England,—*yea, an it were my Lord Chancellor himself, to Tyburn with him.*' We will quote but one more passage. 'He that took the silver basin and ewer for a bribe, thinketh that it will never come out. But he may now know that I know it, and I know it not alone; there be more beside me that know it. Oh, briber and bribery! He was never a good man that will so take bribes. Nor can I believe that he that is a briber will be a good justice. It will never be merry in England till we have the skins of such. *For what needeth bribing where men do their things uprightly?*'

"This was not the language of a great philosopher who had made new discoveries in moral and political science. It was the plain talk of a plain man, who sprang from the body of the people, who sympathized strongly with their wants and their feelings, and who boldly uttered their opinions. It was on account of the fearless way in which stout-hearted old Hugh exposed the misdeeds of men in ermine tippets and gold collars, that the Londoners cheered him as he walked down the Strand to preach at Whitehall,—struggled for a touch of his gown, and bawled—'Have at them, father Latimer.' It is plain, from the

passages which we have quoted, and from fifty others which we might quote, that, long before Bacon was born, the accepting of presents by a judge was known to be a wicked and shameful act,—that the fine words under which it was the fashion to veil such corrupt practices were even then seen through by the common people,—that the distinction on which Mr. Montagu insists between compliments and bribes was even then laughed at as a mere 'colouring.' There may be some oratorical exaggeration in what Latimer says about the Tyburn tippet and the sign of the judge's skin; but the fact that he ventured to use such expressions is amply sufficient to prove, that the gift-taking judges, the receivers of silver basins and ewers, were regarded as such pests of the commonwealth, that a venerable divine might, without any breach of Christian charity, publicly pray to God for their detection and their condign punishment.

"Mr. Montagu tells us, most justly, that we ought not to transfer the opinions of our own age to a former age. But he has himself committed a greater error than that against which he has cautioned his readers. Without any evidence,—nay, in the face of the strongest evidence,—he ascribes to the people of a former age a set of opinions which no people ever held. But any hypothesis is in his view more probable than that Bacon should have been a dishonest man. We firmly believe that, if papers were to be discovered which should irresistibly prove that Bacon was concerned in the poisoning of Sir Thomas Overbury, Mr. Montagu would tell us that, at the beginning of the seventeenth century, it was not thought improper in a man to put arsenic into the broth of his friends, and that we ought to blame, not Bacon, but the age in which he lived.

"But why should we have recourse to any other evidence, when the proceeding against Bacon is itself the best evidence on the subject? When Mr. Montagu tells us, that we ought not to transfer the opinions of our age to Bacon's age, he appears altogether to forget, that it was by men of Bacon's own age that Bacon was prosecuted, tried, convicted, and sentenced. Did not they know what their opinions were? Did not they know whether they thought the taking of gifts by a judge a crime or not? Mr. Montagu complains bitterly that Bacon was induced to abstain from making a defence. But, if Bacon's defence resembled that which is made for him in the volume before us, it would have been unnecessary to trouble the House with it. The Lords and Commons did not want Bacon to tell them the

thoughts of their own hearts,—to inform them that they did not consider such practices as those in which they had detected him, as at all culpable. Mr. Montagu's proposition may indeed be fairly stated thus:—It was very hard that Bacon's contemporaries should think it wrong in him to do what they did not think it wrong in him to do. Hard indeed; and withal somewhat improbable. Will any person say that the Commons who impeached Bacon for taking presents, and the Lords who sentenced him to fine, imprisonment, and degradation for taking presents, did not know that the taking of presents was a crime? Or, will any person say that Bacon did not know what the whole House of Commons and the whole House of Lords knew? Nobody who is not prepared to maintain one of these absurd propositions can deny that Bacon committed what he knew to be a crime.

"It cannot be pretended that the Houses were seeking occasion to ruin Bacon; and that they therefore brought him to punishment on charges which they themselves knew to be frivolous. In no quarter was there the faintest indication of a disposition to treat him harshly. Through the whole proceeding there was no symptom of personal animosity or of factious violence in either House. Indeed, we will venture to say that no state-trial in our history is more creditable to all that took part in it, either as prosecutors or judges. The decency, the gravity, the public spirit,—the justice moderated but not unnerved by compassion,—which appeared in every part of the transaction, would do honour to the most respectable public men of our own times. The accusers, while they discharged their duty to their constituents by bringing the misdeeds of the Chancellor to light, spoke with admiration of his many eminent qualities. The Lords, while condemning him, complimented him on the ingenuousness of his confession, and spared him the humiliation of a public appearance at the bar. So strong was the contagion of good feeling, that even Sir Edward Coke, for the first time in his life, behaved like a gentleman. No criminal ever had more temperate prosecutors than Bacon. No criminal ever had more favourable judges. If he was convicted, it was because it was impossible to acquit him without offering the grossest outrage to justice and common sense."

B.

Hold, I must interpose a word here. This argument

partly touches the case as I understand it. I have admitted that Bacon had done that which he knew ought not to be done. And if I were to admit also the validity of such reasoning as this, which has no coherency unless it be supposed that every action is either quite white or quite black; which knows no distinction between the man who lies in bed when he ought to get up and do a good action, and the man who gets out of bed to do a bad one; between the historian who mis-states facts because he has not taken pains to ascertain the truth; and him who, knowing the truth, relates them falsely to make his story smooth; there would be an end of my whole case. If all men are alike inexcusable who can be convicted of doing what they know ought not to be done, we may all go to the devil together. But surely the fallacy which has deceived Macaulay is so staring that it is a waste of time to point it out.

Take him even at the point where he comes nearest to the truth, even there he is far in error. "The circumstances that there are fifty thousand thieves in London is no excuse (he tells us) for a fellow who is caught breaking into a shop." Indeed! I grant it no justification; but is it no excuse? Is the crime of stealing no more excusable in a man who has been brought up among thieves than in one brought up among honest men? Both know it to be wrong; but is their moral guilt equal?

Take another instance, which comes nearer to the reviewer's personal experience. An honourable gentleman is convicted of having paid a bill for beer, knowing it to have been drawn for the exclusive encouragement of his own voters. Is the circumstance that half the honourable House have done the same kind of thing; that it has been done by one honourable gentleman or another in every contested election for the last hundred years;—is this circumstance no excuse?

A member of a committee on a private bill is charged with voting in total ignorance of the merits of the cause, merely to oblige a friend or a supporter. Is it no excuse that a hundred other members have been in the habit of

voting in such committees, when it was very well known that they had heard neither the evidence nor the arguments ?

A.

Ay, but those are abuses involving no moral depravity.

B.

Are you quite sure of that ? Private interests of great magnitude are often decided by such votes.—But I will give you another case to which you certainly cannot take that exception. I will instance an abuse involving moral depravity in the highest degree:—namely, the deliberate seduction in cold blood of an innocent girl, effected by false promises, and followed by desertion;—an act which cannot be carried through without violating every one of the better feelings of humanity. Describe it by its ingredients,—the coldest selfishness; the basest treachery; the most deliberate, pitiless, and remorseless cruelty; promises made with an intention to break them; confidence, tenderness, and helplessness taken advantage of for the ruin of the helpless confider; the corruption of a human soul, the worse than destruction of a human life, distinctly foreseen, intended, and brought to pass; and all for no other end but to gratify the most brutal of all the appetites, or the most heartless of all the vanities;—you would think there was no room left for any one good quality in the heart that could consent to it. To talk of the possibility of *excuse* for a crime involving such depravities as these, seems a kind of depravity in itself. Yet the circumstance that many men who have, and are known to have, committed it are nevertheless allowed to sit among gentlemen, to commit offenders, to sentence criminals, to administer religious rites, to hold great offices, to enjoy high honours,—nay, that some who are known to be in *the habit* of committing such acts are yet permitted to keep their place in society without any mark of social degradation,—will the severest moralist say that this circumstance forms no excuse ? that it does not in some degree alter

the case? that it does not give room for hope that the offender is not so utterly bad as, *but* for this circumstance, we should be compelled to believe him? To estimate truly the moral guilt implied in any action, we mmst consider what moral virtues a man who does it may nevertheless possess; and we know as a fact that many of those who have been guilty of seduction in cold blood are *not* men destitute of pity, humanity, benevolence, honour, and veracity. There are among them men capable in any other case of self-denial and self-sacrifice; incapable in any other case of telling a lie or breaking a promise; men who may be trusted with untold millions, whose word may be perfectly relied on, whose generosity and benevolence is in no other case appealed to in vain. Is it, then, that they are ignorant? that they do not know it to be a crime? I suppose no civilized and sane man ever whispered so much even to himself. Is it that the crime is not disreputable? That cannot be; for it *is* disreputable: society does require that it be kept out of the public sight. No: it is simply because society *tolerates* it. If you are suspected of cheating at play, you are called on to clear yourself or to quit the society of gentlemen. If you are only suspected of having caused by deliberate treachery the moral ruin and the premature and miserable death of a young girl, no questions are asked: you keep your character as a gentleman, sullied only with a whisper, not always meant to dishonour you, that you are "rather loose with regard to women." And what a man finds to be tolerated in him by the people he lives with, he easily learns to tolerate in himself. And then comes in

> "That monster Custom, that all sense doth eat
> Of habits evil."

and relieves him even from the feeling of shame.

Here at least we have an instance on a vast scale of the power of this general tolerance and countenance of society to hide from a man the enormity of an offence, perhaps the most enormous that a man can commit; an offence not only condemned both by law and opinion, but in itself positively

immoral in the highest degree, presupposing and including a whole catalogue of immoral intentions. How much more ought the same consideration to be admitted in extenuation of that other class of offences which imply no positive immorality; acts which are prohibited not as being evil in themselves, but only as leading towards evil and *likely* to end in it!

A.

That is very true. I admit the excuse in behalf of actions which are tolerated by the people one lives with. But is Bacon's a case in point? Macaulay maintains that the practices of which Bacon was guilty were *not* tolerated. He talks of a thousand proofs not only that they were "universally allowed to be altogether unjustifiable," but also that they were "in the highest degree *odious*." Now seduction, though I think no man would attempt to justify it, cannot I fear be described as "in the highest degree odious." The offence which you distinguish from it as one which society does *not* tolerate—the offence of cheating at play—would be a case more in point; but would it bear out your argument? It is true that cheating at play is odious; but it is also true that no man of average honesty will do it.

B.

Yes, the reviewer talks of a thousand proofs; and produces one. The other nine hundred and ninety-nine I will consider when I see them. Let us examine the one.

It is brought to prove that these practices were "such as he has described them;" not therefore merely to *dis*prove Mr. Montagu's supposed assertion that they were "generally considered as *innocent*,"—an assertion which is not mine and which I do not maintain,—but to prove that they were "universally allowed to be altogether unjustifiable," that they were "in the highest degree odious," that "though many were guilty of them, none had the audacity publicly to avow or defend them." And what *is*

this proof, which though only one of a thousand, is adduced as singly sufficient to establish all this? Simply that Bishop Latimer, being a brave, stout-hearted man, sprung from the body of the people, sympathising strongly with their wants and feelings and boldly uttering their opinions, had more than seventy years before *preached against them!* preached against the corruptions *of the court*, and "exposed the misdeeds of *men in ermine tippets and gold collars*," and for so preaching had been cheered as he went *by "the Londoners"!* Why, if this be proof, I will undertake with a fortnight's notice to prove that the government of England is at this time universally allowed to be altogether cruel and tyrannical, that the ten-pound franchise is in the highest degree odious to the people, that the fine phrases by which it is the fashion to defend it do not impose even upon the vulgar, that it is generallly execrated as a device brought in by the "base, brutal and bloody whigs," and maintained by a conspiracy between a cruel aristocracy and a servile and selfish middle class, that they may between them grind the bones of the industrious people and rob the labourer of his hire,—and as much more as you please in the same strain. It is but to *say* as much at the next "national convention," and I will answer for it that the unfranchised "people" will follow me with cheers as far on my way to Whitehall as the commissioners of police will let them go. If this be proof, I can well believe that nine hundred and ninety-nine more could easily be produced to make up the thousand.

But seriously, where is the vice so prevalent and universally tolerated that it has not been preached against any time these eighteen hundred years? Where is the eloquent invective against vice in high places that has not been applauded by people in low? Let the reviewer choose his own example. Let him point out that form of corruption whch is most countenanced by the practice, and least discountenanced by the opinion, of the time; and I will undertake to produce a sharp invective against it at least seventy years old. In the mean time I will take an example with

which he has himself unintentionally supplied us already. Some time ago I asked you to remark and remember a spirited paragraph in which he raised some questions concerning the practice of advocates in our modern courts of justice, and how far the doctrines held on that subject by English lawyers were agreeable to reason and morality. The professional rules, he admitted, were rules to which "many good and virtuous men had conformed and were daily conforming," and that a man who did no more than these rules required of him might justly be held blameless.

A.

I remember.

B.

And do you remember also his account of what the practices were which these rules sanctioned? Do you remember his lively picture of the man with a wig on his head and a band round his neck doing for a guinea what without those appendages he would think it wicked and infamous to do for an empire? of the man who, not merely believing but knowing a statement to be true, sets himself to do all that can be done by sophistry, by rhetoric, by solemn asseveration, by indignant exclamation, by gesture, by play of features, by terrifying one honest witness and by perplexing another, to cause a jury to think that statement false?

A.

Yes, I remember it very well. What then?

B.

Why then I say that we have here a case offered to our hands by the reviewer himself—(he was writing in 1837, and I think neither the rules nor the practice have been altered since, or not altered for the better,)—in which a wise and virtuous man may conform *without blame* to a practice which eleven years ago was thus denounced in a

popular periodical as "wicked and infamous;" or only not denounced as infamous because "the circumstance that a great many people were in the habit of committing it" was allowed as an excuse. If a lawyer may blamelessly do what other lawyers do in spite of the reviewer's paragraph, why might not a Judge as blamelessly do what other Judges did in spite of Latimer's sermon?

A.

I think indeed we must give up Latimer. But what do you say to the remaining argument, which is drawn from the opinion of Bacon's own contemporaries,—drawn not from the denunciations of the pulpit or the applause of the multitude, whose withers were by the nature of the case unwrung, but from the feeling of the two houses of parliament, comprising Councillors, Judges, and great men? There is surely some force in that. If a lawyer were accused of resorting to these tricks and abuses of advocacy, he would plead in excuse the general practice and rules of his profession, and his plea would certainly be admitted. Bacon's plea, it seems, was not admitted.

B.

True. Here at last we have an argument which deserves a serious answer, and to which I must beg your serious attention; for the fallacy does not lie on the surface.

But let me first detach it from the grosser fallacy which runs through the three pages preceding, and may be despatched in a few words. Strip the logic of its rhetorical drapery and the argument shrinks to this: Every action is either believed by everybody to be right, or regarded by everybody as wrong. The taking of presents by a Judge was not then believed by everybody to be right, for Latimer preached against it and the Londoners applauded. Therefore it was regarded by everybody as wrong. Now if Bacon did what was regarded as wrong by everybody,—"himself and all around him,"—he cannot be excused on the plea that he was doing what was not regarded as wrong by anybody. Such is the naked argument, and "a

poor, bare, forked animal" it is. Deny the major and the whole superstructure tumbles. And I suppose I need hardly say that the major must be denied. I need hardly remind you that there are no such broad gulfs fixed by nature between the "known to be bad" and the "generally believed to be good;" that new discoveries in morality never pass thus suddenly from darkness into full daylight, but have always a dawn during which the true shape and aspect of the moral question is seen darkly; not yet clearly distinguished and yet not altogether undistinguishable; doubtfully guessed at through the mists of custom and prejudice. The progress of light in every department is marked by these gradations, and in no department so much or so inevitably as in the detection and bringing into disrepute of an abusive *custom*. "Men's thoughts are much according to their inclination; their discourse and speeches according to their learning and infused opinions: but their *deeds* are *after as they have been accustomed*." And hence it is that corruption adheres to the grosser element of manners long after it has been expelled both from opinion and from doctrine. And this brings us to the real point upon which our question turns: what was the actual condition of public opinion with regard to gift-taking by Judges during the time of Bacon's chancellorship?

Now I think it will be found that the reformation of social abuses always proceeds by a course of secret undermining. The habit, which is as the crust on the surface, is the last thing which goes. The ignorance or error out of which it originally grew is gradually cleared away; but the habit itself, being interwoven with the business and interests of life, cannot be so easily altered. The practice therefore continues till all that justified or seemed to justify it is gone; and then it falls with a touch, and great is the crash thereof.

A.

Less metaphor, if you please, and more of the thing itself.

B.

I used the metaphor for explanation only, not for proof. But the thing is this. A practice, natural and perhaps innocent in itself, grows into a custom, and is abused for purposes not innocent. The corrupt tendency of it is first seen and exposed by one man, then denounced by a few men, then generally admitted and recognized by all who are not concerned in it,—who not being under the thrall of custom are called on to deal with it in "speech and discourse" only, not in "deed." Then it is that the Latimers preach against it and the Londoners applaud. Meanwhile those who have been bred up in it and worked it into their habits, though for that very reason they cannot *feel* the badness of it, are yet unable to defend it in reason. They are therefore silent. They do not at once shake it off; for that requires more prompt and peremptory resolution than will commonly be inspired by a simple disapproval and *wish* to reform, when unstimulated by the fear of shame or the jealous sense of honour. Thus the practice still continues, while the censure, passing uncontradicted, obtains a popular allowance. Then it is that good men may be seen conforming to a practice which is generally condemned, which they themselves cannot justify, but in which they are still countenanced by the custom, and *tolerated* by the opinion, of the time; (for that a practice which is universally condemned may nevertheless be generally tolerated, we have abundant proof about us at all times). At length comes the crisis. The opinion and the practice,—the new opinion, expressed and allowed but not yet enforced—and the old practice, condemned and undefended but still tolerated,—are brought by some accident into collision. Some one—no matter who—not the guiltiest, but he who happens to stand most in the way—is publicly charged with the old practice which the new opinion condemns as a crime. He is fairly caught. He has done that which everybody says is wrong. He cannot say that he has not done it; he cannot say that it is not wrong. All men are prepared to

cry shame, and those perhaps will cry loudest who are most in his own situation; who not being able to feel in their hearts, yet cannot refuse to acknowledge in argument, the badness of the practice. And thus, though guilty of nothing worse than the want of extraordinary virtue, he is amazed to find himself all at once convicted of a proclaimed and acknowledged crime.

Is not this the natural history of a moral reform,—of the process by which manners are purified?

A.

Indeed I think so.

B.

State Bacon's case truly then, and it altogether eludes the dilemma in which the reviewer tries to catch it. The offender's excuse is to be found not in the general prevalence, but in the general *toleration* of the offence. Now the sudden discovery by the men of Bacon's own times that they all thought gift-taking criminal, the consent of the Commons to impeach him and of the Lords to fine, imprison, and degrade him for it, are by no means incompatible with the fact that gift-taking had been *till then* as well generally tolerated as generally practised. That the bankrupt has no friend to help him in his need does not prove that the spendthrift had no friend to encourage him in his waste. As long as a Judge could be known to take presents without losing his reputation for integrity, so long the practice of taking presents was tolerated; and so long as it was tolerated, it was an abuse of the times, and as such entitled to excuse.

Try again the modern instance to which I so often recur, of corruption at elections. No one can deny that this is prevalent, or that it is prohibited by law, or that it is condemned by public opinion. Yet who can say that it is not generally tolerated? Where is the man that is thought the worse of by his friends because they know him to be guilty of it? Where is the man who has lost in consequence

of that known guilt a single chance of an election, or a dinner, or an office? Yet to hear a bribery debate in the House of Commons, you would think that no man with any pretensions of character had ever been suspected of such a thing. Here is an extract from a speech made exactly six years ago upon Mr. Roebuck's motion for a committee upon election compromises. I set it down at the time, not only for its sense and truth, but as singularly applicable to our present argument. The House had broken out into a fit of moral astonishment and indignation upon hearing, what every soul in the House had known ever since he knew the alphabet, that there had been corruption at elections. Against this absurdity one member had the decency to protest.

"He accused the members generally of a want of moral courage, in giving way to public opinion instead of consulting and obeying the dictates of their own consciences. If the House began an investigation of this description, he knew not where it would end [*cheers*]. The motion of his honourable and learned, and he might also add gallant, friend would render certain members of the House the victims of public obloquy for having done that in which they believed there was nothing wrong. They had done that which any honourable member in the same circumstances would himself have done [*cheers and cries of no, no*]. Many spoke of bribery in this House in terms which they would not think of using out of it. The tone of parliament and of private conversation on the subject was widely different; for out of doors, statements of cases of bribery were only received with laughter; and the grosser the case often the louder the laughter [*cheers*]. In the House, however, the mode of treating the question was almost the very opposite."

A.

I suppose the Collective Corruption voted that a slander?

B.

Oh yes; the "no, no" would have it of course; each would be ready enough to answer for the honour of all. Nevertheless the statement was notoriously true. And

here we have a correct description, not at all overcharged, of the state of public opinion with regard to every tolerated abuse at one stage (the last but one) in the process of reformation. And it would probably have been followed then and there by the last stage of all, namely the casting out of certain members as "victims of public obloquy," but for two reasons: one, that the motion was a little premature; the new opinion being not then quite strong enough to carry all before it: the other, that of those without whose consent the sacrifice could not be made, a large proportion were in danger of being themselves among the victims. If the charge of electioneering bribery had touched only a small number of eminent men, a victim would have been offered up long ago, and electioneering bribery would have been as obsolete by this time as judicial bribery has been for the last two centuries.

Now with regard to judicial bribery,—to the custom (than which none is more natural, and which, though it necessarily perhaps ends in corruption, does by no means necessarily proceed out of it) of conciliating by presents and compliments the good will of the Judge with whom your cause rests,—Bacon stood in precisely the same position in which Mr. Roebuck's intended victims stood with regard to bribery at elections; only that in Bacon's case the two impediments above-mentioned to the prosecution of the question did not exist.

In his case, the new opinion was already strong enough to carry all before it; those who demanded the sacrifice were in no danger of being victims; the arbiters were not themselves implicated in the offence; the offenders were few and eminent; and the more thoughtful observers who could have charged honourable members with assuming in the House a tone of morality which they never expressed out of doors,—who could have "told them the thoughts of their own hearts, and informed them that they did not consider such practices as at all culpable," were overborne in the tide. The short truth is, that Morality was in labour and about to be delivered of a new maxim. It was one

of those moral uproars, which rise from time to time, and which express, not the general indignation at the breach of old maxims in morality, but the birth of new ones. If they prove that the condemned practice was *then* generally considered criminal, they prove also that it had *not till then* been generally *felt* to be so. I could quote more than one uproar of the kind that has happened within the last fifteen years.

A.

You need quote no more on my account. I admit that the popular outcry in such a case is no index to the moral guilt. I can fancy a man, who is even morally innocent, falling a victim both to judicial severity and popular obloquy,—*for a time*. But then if he were a man otherwise interesting and memorable, I should expect a reaction of opinion in his favour. If Bacon was so much misjudged and so hardly dealt with during the storm, how is it that his reputation did not revive when the storm was over?

B.

Because in order to obtain the reversal of a popular judgment once pronounced and allowed, a man must have not only a case of absolute innocence, but a case strong, clear, and popularly intelligible. Now Bacon was not absolutely innocent. His excuse did not amount to a justification; and turned moreover upon certain nice distinctions and qualifications, of which, though absolutely essential to a true judgment, the popular judgment was not capable. The popular judgment is always determined by the broad effect; and the broad effect in this case was public conviction of an offence liable to a high penalty and called by a bad name. If I were asked to sum up Bacon's case in the fewest words, I should call it *a little fault meeting with a great accident;* and whenever that happens you will find that the fault bears all the blame. The fault without the accident would have passed for a small fault: the accident without the fault would have passed for an

accident. But the two falling out together make up in the popular judgment one great fault.

A.

For a time perhaps it may be so. People may fall into some such error just at first. But you do not mean to say that any man confounds the fault with the accident after he knows which is which.

B.

I mean to say that you can never get men to consider which is which. I mean to say that, in all my experience of such cases, I have found that the distinction is either not taken or not allowed. Compare the popular censure which is passed upon a fault which happens to cause a great mischief, with that which is passed upon the very same fault when it happens to cause none, and you will see that what I say is true. A railway servant turns a train into a siding by mistake: if no harm happens, he is reprimanded, and it would be thought very hard if he were dismissed: if another train chances to be in the way, he is tried for manslaughter, and if he escapes with two years of the treadmill he is thought to be too mercifully dealt with. Yet his *fault* is precisely the same in both cases. Some years ago, a commander of a king's ship ran her on the rocks while sailing down the St. Lawrence in a fog at eight knots an hour. He got her off, after she had bumped among the rocks for a whole night. He had no means of ascertaining how much she was injured, without taking her into dock. But to take her into a dock on that side of the Atlantic would have been troublesome and tiresome; and therefore, though the service she was on did not in the least require speed, he determined to run the risk of taking her across as she was. By a combination of skill, courage, immense exertion and miraculous good luck, he carried her safe into Portsmouth; was tried by a court-martial; and acquitted with high compliments. And I have seen this very action paraded in an election placard

as the great feather in his cap. Yet if she had sunk on the passage, he would have been thought as guilty of the death of every man on board as ever a careless engine-driver was of the death of passengers killed by a collision.—Nay, so difficult is it to distribute the moral blame justly in such cases, that a man not only cannot obtain due allowance from others, but he cannot make it for himself. A gentleman carries his gun carelessly through a hedge; it goes off by accident and hurts nobody. He does the same thing again; it kills his friend. Here again the *fault* is precisely the same in both cases. Yet in the one, he curses the hedge, reloads, and thinks no more about it: in the other, his hair turns suddenly gray, he will never touch a gun again, and is a melancholy man for the rest of his days. The circumstance which makes such an immense difference in the degree of his self-condemnation is purely accidental.

And something of the same kind it is that happens in cases like that of Bacon, where a sleeping penalty is accidentally awakened, and an abuse hitherto countenanced by silent acquiescence is suddenly called to its answer and voted infamous by public acclamation. That he did not peremptorily set himself against everything that could be mistaken for corruption, was a *fault*. That the public opinion concerning corruption was just then suddenly purified by a storm, and that the storm surprised him while in company with other men more guilty than himself, was an *accident;* an accident which explains, though it does not justify, the severity of the judgment which has been passed upon him. Thenceforward the taking of presents was to be corruption, and corruption was to be infamous; and Bacon had taken presents. "Never allow yourself to confound vice and virtue," said Dr. Johnson; "the woman's a whore, and there is an end of it;" and though upon more than one case of the same kind a very different judgment was pronounced by the highest of all authorities, yet certainly on earth these things are judged according to Dr. Johnson.

This was no doubt the light in which Bacon viewed his own case. This was the reason why he regarded a juster

and more charitable judgment as a thing to be despaired of from his own age, to be hoped for from the "next ages," and to be surely and certainly expected from that tribunal before which the secrets of hearts shall be open, and vice and virtue shall no longer be confounded either by the Boswells on the one side distinguishing things which are not essentially different, or by the Johnsons on the other not distinguishing things which essentially are so. This was the ground on which in his secret heart he rested his defence; though with sublime self-denial and a submission to the course of earthly justice more noble than any victory, he refrained from giving public utterance to it. "Of my offence," he wrote about a year and a half later, in a sheet of private notes made more private by the use of Greek characters, "of my offence far be it from me to say *dat veniam corvis, vexat censura columbas*"—[it was not for him to say that, but for others to say it for him]—"but I will say that I have good warrant for, *they were not the greatest sinners in Israel upon whom the wall of Shilo fell.*" * Let him therefore who is without sin among us; him who has never acquiesced in any abuse of the times, which in his better moments he has felt it to be an abuse; him who is conscious of no act committed in the security of privacy or under the encouragement of popular indulgence, which if publicly challenged he would be ashamed to justify; let him, I say, fling the stone. For myself I do not profess to be qualified for the office.

A.

Then let us try the next paragraph. You have still your most important point to make out. You persist in talking of *presents:* the reviewer insists that they were *bribes.*

B.

To *make out* that they were presents and not bribes; to

* Works, vol. vi. p. 331.

give *positive proof* that none of them were taken with an understanding that the cause should go in favour of the giver; is more than I can undertake. It is the reviewer's business to make out that they were. Bacon himself declared that he "never had any bribe in his eye or thought when he pronounced any sentence or order." No accusation to that effect is implied in any of the articles which he was required to answer. They state merely that the presents had been taken, but say nothing of any contract, condition, or unjust judgment. In these circumstances I feel entitled to believe his assertion, until I have some positive evidence to the contrary. I do not go so far as to say that none *can* be produced, but I wait to hear what it is. It may be that the evidence which satisfies the reviewer will not satisfy you and me.

A.

I must admit that he has not distinguished himself in producing evidence hitherto.

"Mr. Montagu's other argument, namely that Bacon, though he took *gifts*, did not take *bribes*, seems to us as futile as that which we have considered. Indeed we might be content to leave it to be answered by the plainest man among our readers. Demosthenes noticed it with contempt more than two thousand years ago. Latimer, as we have seen, treated this sophistry with similar disdain: 'Leave colouring,' said he, 'and call these things by their Christian names—bribes.'"

B.

I admit that such a distinction *may be* sophistical and false; but I assert nevertheless that it *may be* just and true. A present *may be* given and taken without any thought of bribery. Latimer himself, by implication, admits as much. "First let him be a covetous man; then let him go a little further and take bribes; and *lastly* pervert judgment:" which means that a man may be covetous and yet not take bribes, and may take bribes and yet not pervert judgment. The question is, in which degree Bacon's offence lay. He

was never accused of the first. Can he be justly accused of the last?

A.

"Mr. Montagu attempts—somewhat unfairly we must say —to represent the presents which Bacon received as similar to the perquisites which suitors paid to the members of the parliament of France. The French magistrate had a legal title to his fee; and the amount of his fee was regulated by law. Whether this be a good mode of remunerating Judges is not the question. But what analogy is there between payments of this sort and the presents which Bacon received,—presents which were not sanctioned by the law, which were not made under the public eye, and of which the amount was regulated only by private bargain between the magistrate and the suitor?"

B.

I do not defend Mr. Montagu's argument. The analogy, I admit, fails in the material point. But I object to the word "bargain." I desire an instance in which the amount of any of these presents was "regulated by a bargain" between Bacon and the suitor.

A.

"Again, it is mere trifling to say that Bacon could not have meant to act corruptly, because he employed the agency of men of rank, of bishops, privy councillors, and members of parliament;—as if the whole history of that generation was not full of the low actions of high people;—as if it was not notorious that men as exalted in rank as any of the decoys Bacon employed, had pimped for Somerset and poisoned Overbury."

B.

Here I object to the word "decoys" for the same reason that I objected a little while ago to the word "jackals." I require an instance in which Bacon employed any man as a decoy.

With regard to the rank of the persons who went between, I admit that there was *one* man of high rank who

"pimped for Somerset and poisoned Overbury." But that such men should be selected as instruments to be openly employed in a proceeding notoriously infamous, I cannot think *likely*. It was certainly not so in the case to which the reviewer alludes. The Earl of Northampton (whom he means by "men") was not an instrument, but an employer of instruments. He was a principal instigator of the murder of Overbury; and the instruments whom he selected were men of the lowest character. The most cautious and guilty secrecy was observed in the whole transaction. Not a single man of decent reputation was made privy to it; except perhaps the Lieutenant of the Tower; and he was brought from a distance and placed there on purpose. As soon as the fact came to the knowledge of the Council, it was treated as a monstrous crime. The King did not wait for a virtuous House of Commons to demand the prosecution, but ordered the most rigorous investigation to be commenced at once. Every person who was found to have had a hand in it became from that moment infamous. These are the outward signs of an infamous transaction. But not one such sign can be traced in Bacon's case. The presents seem to have been brought, as it happened, some by his own servants,—secretaries or gentlemen of his retinue; some by friends who were in habits of intercourse with him; not hired, not specially selected, not charged to observe secrecy, not admitted (so far as we know) to any peculiar confidence. When they did these things, they had characters to lose. When they were known to have done them, their characters were not lost. Concealment does not seem to have been studied at all; the very number of witnesses is enough to prove that; and when I look at the particulars of the original charges which appear to have dropped off upon examination, as not touching Bacon personally,—the particulars, I mean, which appear in the charges as sent up by the Commons and not in the collection finally made out by the Lords,—I cannot help suspecting that he knew less of what was going on than any one else in his household. If it could be proved that these

transactions had been carefully kept from the knowledge of all men of credit and character,—that no man of credit or character had anything to do with them,—the presumption that he meant to act corruptly would surely be much stronger; and if so, the rank of the persons through whose hands the presents came, though it may not be a conclusive, is surely not a *trifling,* circumstance in his favour.

A.

Certainly not. The reviewer is himself the trifler here.

"But, says Mr. Montagu, these presents 'were made openly and with the greatest publicity.' This would be a strong argument in favour of Bacon. But we deny the fact. In one, and one only, of the cases in which Bacon was accused of corruptly receiving gifts does he appear to have received a gift publicly. This was a matter depending between the Company of Apothecaries and the Company of Grocers. Bacon in his Confession insisted strongly on the circumstance that he had on this occasion taken presents publicly, as a proof that he had not taken them corruptly. Is it not clear that if he had taken the presents mentioned in the other charges in the same public manner, he would have dwelt on this point in his answer to those charges? The fact that he insists so strongly on the publicity of one particular present is of itself sufficient to prove that the other presents were not publicly taken. Why he took these presents publicly and the rest secretly, is evident. He on that occasion acted openly because he was acting honestly. He was not on that occasion sitting judicially. He was called on to effect an amicable arrangement between two parties. Both were satisfied with his decision. Both joined in making him a present in return for his trouble. Whether it was quite delicate in a man of his rank to accept a present under such circumstances, may be questioned. But there is no ground in this case for accusing him of corruption.

"Unhappily the very circumstances which prove him to have been innocent in this case prove him to have been guilty on the other charges. Once, and once only, he alleges that he received a present publicly. The inference is, that in all the other cases mentioned in the articles against him, he received presents secretly. When we examine the single case in which

he alleges that he received a present publicly, we find that it is also the single case in which there was no gross impropriety in receiving a present. Is it then possible to doubt that his reason for not receiving other presents in as public a manner was, that he knew it was wrong to receive them?"

B.

There is another precious piece of logic! In one of the cases, and only in one, there happened to be upon the very face of it conclusive proof that he did not mean to act corruptly: therefore we are to conclude that in all the others he *did* mean to act corruptly! In one case he received a gift publicly, because innocently: therefore in all the others he received them secretly because guiltily! It is needless to point out the absurdity of drawing such an inference from such a fact. But that you may know how much may be fairly inferred from the circumstance alluded to, you must first know what it really was; which the reviewer with careless felicity leaves to your imagination.

There were twenty-three distinct cases in which Bacon was charged with corruption in receiving presents from persons who had suits in his court. He did not deny that he had received them. He did not deny that *in some of the cases* the receiving of them did in true construction of law amount to corruption. But did they imply a corrupt *intention?* Of that, none of them contained conclusive evidence. Some of them had been received after the cause was over, no precedent promise having passed: some, that had been received before the cause was over, had been presented as new year's gifts, or upon his first coming to the Seal, or upon the furnishing of a new house, or upon some of the occasions when presents were usual to persons in his station from persons who were not suitors: others came from old clients in acknowledgment of old favours: others were for services not strictly judicial,—as awards made with the consent of the parties upon reference to him as arbitrator: others had been ordered to be returned; and so on: each case having its peculiar circumstance of

palliation. That they had been given and taken without any studious attempt at concealment may be inferred, as I said, from the evidence; but this (being no justification) was not insisted on by him, except in one instance, where a special circumstance made it decisive as to the innocence of his intention; which was this: Having, as arbitrator between three *companies*, concluded an arrangement with which they were all satisfied, he had received a present from each of the three; each present being made *out of a common purse;* the purse of the company. And these presents counted as three among the charges of corruption. Upon this item, after explaining the nature of the case and why he had not thought it wrong to receive what they voluntarily offered, he very naturally pointed out the circumstance of the *common purses*, as conclusive of the innocence of his intention—"for if I had taken it (he said) in the nature of a corrupt bribe, *I knew it could not be concealed*, because it must needs be put to accompt to the three several companies."

This is all. Now how much may you infer from it?

A.

Let me consider. I should infer that in the other cases he had not evidence equally conclusive that he meant no harm; for that if he had he would have mentioned it.

B.

Exactly so. In the other cases he had only not studied concealment, but in this he must have known that concealment was impossible. But why did this appear in no other case? Obviously, because evidence equally conclusive could only be found where one of the parties happened to be a *company* with a common purse. In any other sense than that, it does not appear that the present was received more publicly on this occasion than on any of the others. Had he been arbitrating between three individual merchants instead of three companies, the case would have been the same, the fault the same, the excuse

the same. Only what the reviewer calls the "publicity," meaning the knowledge that concealment was impossible, would have been wanting.

A.

I see. The publicity was not a precaution, but an accident. And since his reason for receiving this present so openly was not that he knew it was right to receive it, but only that he was dealing with a company; it will be possible to suppose, you will say, that his reason for receiving others less openly was not that he knew it was wrong to receive them, but only that he was *not* dealing with a company.

B.

Possible, therefore, to believe that the argument in the last paragraph is wholly inconclusive. And indeed to deny the reviewer's inference is not only in logic possible, but in fact necessary. That none of the other presents was received as openly, is in fact not true; the French merchants presented Bacon *out of their common purse* with a thousand pounds. That none of the other presents was received as innocently, is in fact not true: two others, the second and the thirteenth, were received upon occasions of the same kind,—the conclusion of an amicable arrangement between parties who had voluntarily submitted to his arbitration.

A.

Nay then I must give up my client altogether. Whether he has a good case or a bad one, he seems to be equally incapable of getting through without blunders both of argument and of fact.

But I suppose we may as well go on when we are about it. Here are but two pages more on this point.

B.

Yes: go to the end. I believe I can grant him his last point.

A.

"One argument still remains, plausible in appearance, but admitting of easy and complete refutation. The two chief complainants, Aubrey and Egerton, had both made presents to the Chancellor. But he had decided against them both. Therefore he had not received those presents as bribes. 'The complaints of his accusers were,' says Mr. Montagu, 'not that the gratuities had, but that they had not, influenced Bacon's judgment; as he had decided against them.'

"The truth is, that it is precisely in this way that an extensive system of corruption is generally detected. A person who by a bribe has procured a decree in his favour, is by no means likely to come forward of his own accord as an accuser. He is content. He has his *quid pro quo*. He is not impelled either by interested or by vindictive motives to bring the transaction before the public. On the contrary he has almost as strong motives for holding his tongue as the Judge himself can have. But when a Judge practises corruption, as we fear that Bacon practised it, on a large scale, and has many agents looking out in different quarters for prey, it will sometimes happen that he will be bribed on both sides. It will sometimes happen—"

B.

Remember that I deny the "agents looking out for prey." It may be that some of Bacon's servants or friends did, for the sake of their own share in such presents, procure them to be offered. But that Bacon himself knew of any such procurement I have seen no shadow of evidence, and I do not believe it. For anything that can be gathered from what we know of the investigation, they were believed by him to be purely voluntary.

A.

"—It will sometimes happen that he will receive money from suitors who are so obviously in the wrong that he cannot with decency do anything to serve them. Thus, he will now and then be forced to pronounce against a person from whom he has received a present; and he makes that person a deadly

enemy. The hundreds who have got what they paid for, remain quiet. It is the two or three who have paid, and have nothing to show for their money, who are noisy.

"The memorable case of the Goëzmans is an example of this. Beaumarchais had an important suit depending before the parliament of Paris. M. Goëzman was the Judge on whom chiefly the decision depended. It was hinted to Beaumarchais that Madame Goëzman might be propitiated by a present. He accordingly offered certain *rouleaus* of *Louis-d'or* to the lady, who received them graciously. There can be no doubt that if the decision of the court had been favourable to him, these things would never have been known to the world. But he lost his cause. Almost the whole sum which he had expended in bribery was immediately refunded; and those who had disappointed him probably thought that he would not, for the mere gratification of his malevolence, make public a transaction which was discreditable to himself as well as to them. They knew little of him. He soon taught them to curse the day in which they had dared to trifle with a man of so revengeful and turbulent a spirit,—of such dauntless effrontery, and of such eminent talents for controversy and satire. He compelled the parliament to put a degrading stigma on M. Goëzman. He drove Madame Goëzman to a convent. Till it was too late to pause, his excited passions did not suffer him to remember that he could effect their ruin only by disclosures ruinous to himself. We could give other instances. But it is needless. No person well acquainted with human nature can fail to perceive that, if the doctrine for which Mr. Montagu contends were admitted, society would be deprived of almost the only chance which it has of detecting the corrupt practices of Judges."

B.

That may be true; and I should certainly not think of urging such an argument as conclusive. *My* reason for believing that Bacon's decrees were not *bought* is the absence of all evidence that they were *unjust,* coupled with the consideration that evidence could hardly have been wanting if they were. For consider: if hundreds of his decrees were *bought,* it is surely not too much to assume that *many* of them were unjust. Now by every unjust decree if one man "got what he had paid for," another lost what

belonged to him. Every man so aggrieved had some means of redress, and *after Bacon's conviction* he must have had every encouragement and advantage in pursuing it; for, the practice of corruption being admitted, the *presumption* would be against the judgment.—You admit that?

A.

Certainly.

B.

Then I desire to know how many of Bacon's decrees were appealed against; and of those how many were reversed. If none or few, how can you believe that he had sold them by the hundred? If many, where are they? Reversals of decrees in Chancery must be recorded somewhere; and yet (except a somewhat loose assertion in a manuscript of Sir Mathew Hale's published by Hargrave) I can find no mention of any such reversals anywhere. Sir Mathew Hale, it is true, in tracing the origin of the jurisdiction of the Lords in reversing equity decrees, mentions the censure of Bacon "for many decrees, made upon most gross bribery and corruption," —words sufficiently justified by the terms of the sentence and submission, and grounded probably upon nothing more,—"and this," he adds, "gave such a discredit and brand to the decrees thus obtained, that *they were easily set aside*, and made way in the parliament of 3 Car. for the like attempts against decrees made by other chancellors." Now that the decrees made by Bacon upon the cases in which the presents were admitted to have been received, were thereby *discredited*, we may safely conclude: the presumption, as I said, would of course be against them: and if by "easily set aside" be meant only that, their authority being lost, *the right of appeal against them* was easily admitted,—(and such may very well be the meaning, for this is the point which Sir Mathew was considering),— I can easily believe that also. But if he means that they were easily *reversed* on appeal; that is, that *many of them*

were reversed; I still ask where the evidence is. Sir Mathew Hale is so great an authority, that—though manuscripts not published or left for publication by the writer are to be received with caution, as probably containing some loose suggestions which he intended to verify at more leisure,—any assertion of his is well worth inquiry. But he was a boy when these things happened. He was writing, it would seem, after the Restoration. His information, so far as it rests upon his personal knowledge and judgment, must have been derived from documents which were then, and should be still, accessible. Where are we to look for these documents? From the passage I have quoted, I should have been led to look in the records of the proceedings of the House of Lords; for he is obviously speaking of reversals of decrees in Chancery "by an inherent original jurisdiction" in that House; which jurisdiction, he tells us, had its rise upon three occasions; the first being this case of Bacon; whose decrees being made upon bribery and corruption were "easily set aside" and made way for "the like attempts" seven or eight years after; and this would certainly lead one to suppose that Bacon's decrees were set aside *by the House of Lords* in virtue of this supposed original jurisdiction, and to look in the Lords' journals for traces of them.

But the next page seems to make this inquiry superfluous; for there he tells us that he "could never yet see any precedent"—he does not say *any other*, but *any* precedent—"of such proceeding in the Lords' House *of greater antiquity than* 3 *Car. I.*" And how could that be if it was by *the Lords* that "many of Bacon's decrees had been easily set aside"?

Moreover, that Sir Mathew had seen no records of such proceedings upon Bacon's decrees, is made still clearer by the passage which immediately follows.

"I shall now," he proceeds, "show what was *the first attempt* of setting up this jurisdiction in the Lord's House, and what success it had.

"Before the parliament of 18 Jac., when the Lord Chancellor

Bacon was censured for corruption, the course for reversal of decrees was,—either by petition to the King and thereupon a commission issued to examine the decree and proceedings, whereof there are some precedents;—or else to set it aside by act of parliament; and such was the proceeding of 26 Maii 21 Jac. for reversing a decree for the felt-makers and some others about that time."

This proceeding (I should tell you) appears in the Commons' journals; but I cannot gather from the notes by whom the decree in question was made. However, it was not one of those upon which Bacon had been charged with corruption.

"But even in these latter parliaments in King James's time," Sir Mathew goes on, "the reversal of decrees by the inherent power of the Lord's House was *either not known*, or so new that it was *scarce adventured upon by the Lords.*"

And he then goes on to relate the proceedings upon an appeal against a decree made *not by Bacon*, but by Bishop Williams who succeeded him.

If therefore any of Bacon's decrees were reversed, it was not (so far as Sir Mathew Hale could discover) by the House of Lords; but must have been either by act of parliament, or by the King's commission. Yet in the table of contents to the Statutes at large, a list is given of the titles of private acts; and I have searched in vain there for traces of any such reversals. From the Commons' journals I find indeed that about the time of his fall several bills for the reversal of decrees in Chancery were *brought in;* but I cannot find that any one of them reached a third reading. I find also that about three years later another bill of the same kind,—and one which very nearly touches the point in question,—was brought in; namely "an act to avoid a decree procured indirectly and by corruption between the Lord and Lady Wharton, etc. and Edward Willoughby, Esquire." It was read a first time on the 13th of March 1623–4; and this was one of the cases in which a present had been received by Bacon, *pendente lite.* If this bill had

passed, therefore, it would have been one case in point. But I cannot trace it beyond the second reading, and no such title is to be found among the private acts. I conclude therefore that it did *not* pass; and if so, the fact tells on my side.

Another fact which I cannot well reconcile with the supposition that many of Bacon's decrees were reversed in this way, is supplied by a note of his own, set down about the end of the year 1622. It occurs in a sheet of memoranda for a conversation with Buckingham's mother, written for privacy in Greek characters, and runs thus: "You may observe that last parliament,"—meaning the session which commenced on the 14th of November and ended on the 18th of December 1621,—"though an high-aiming parliament, yet *not a petition*, not a clamour, *not a motion*, not a mention, of me."

Upon this point therefore the records of parliament tell distinctly and almost decisively in Bacon's favour. They show that the circumstances of his conviction did encourage suitors to *attempt* to get his decrees set aside; that several such attempts were made; but that they all *failed*;—thereby strongly confirming the popular tradition reported by Aubrey,—"His favourites took bribes: but his Lordship always gave judgment *secundum æquum et bonum*. His decrees in Chancery stand firm. There are fewer of his decrees reversed than of any other Chancellor."

If on the other hand they were reversed by a *commission* appointed for the purpose, we must surely have had some news of it. Yet I cannot suppose that either Sir Mathew Hale himself or his editor, who prefaces the tract with an elaborate investigation of the whole subject, had heard of any such proceeding. They could not but have mentioned it if they had.

Upon the whole therefore I think I may conclude either that the decrees mentioned by Sir Mathew Hale were considered as *ipso facto* set aside by the admission of corruption—(which could hardly be, and even if it were, could not be taken to prove more than is admitted in the con-

fession,)—or that he used the words loosely, meaning only that they were *easily allowed to be called in question*;—(which might be true, and yet upon question they might all be found just;)—or lastly, that he was speaking without book. And either way I may still ask, where is the evidence of *justice perverted?* Till some evidence is produced to that effect, I may still believe Bacon's own judgment upon his own case to be true. He expressed it on two occasions; privately indeed, but clearly and unequivocally. The first was in a letter to Buckingham, written from the Tower on the 31st of May 1621; in which, after entreating him to procure his discharge and not to let him die in that disgraceful place, he proceeds:—

"And when I am dead, he is gone that was always in one tenor, a true and perfect servant to his master, and one that was never author of any immoderate, no nor unsafe, no (I will say it) nor unfortunate counsel; and one that no temptation could ever make other than a trusty and honest and thrice-loving friend to your Lordship; and howsoever I acknowledge the sentence just, and for reformation's sake fit, *the justest Chancellor that hath been in the five changes since Sir Nicholas Bacon's time.*"

This was written in the season of his deepest distress. The other occasion I cannot date. But I take the words to express his deliberate judgment, imparted to the confidential friends of his latter days;—imparted privately, and (it would almost seem) under some injunction to keep it private; for Dr. Rawley, whose affectionate reverence preserved the record, took the precaution to write it in a cipher, and never published or alluded to it in print. It is found in a common-place book, begun apparently soon after Bacon's death and containing memoranda of various kinds, most of them, especially in the earlier part, relating to him and his works. The first few pages are filled almost entirely with apophthegms; two or three of which are written in a kind of simple cipher, the Greek character being used for the consonants, and the first five numerals for the vowels; the rest in Rawley's usual hand. Opposite to

many of them is written *stet*, with a number affixed; which means no doubt that they were to be included in the collection of Bacon's apophthegms which were afterwards printed in the second edition of the *Resuscitatio*. At the top of the first page stands this sentence, written in the cipher and not marked or numbered; a sentence which I suppose Rawley had been forbidden to publish, but could not allow to perish. All motive for reserve having long expired, it may now be released from its obscurity.

"I WAS THE JUSTEST JUDGE THAT WAS IN ENGLAND THESE FIFTY YEARS. BUT IT WAS THE JUSTEST CENSURE IN PARLIAMENT THAT WAS THESE TWO HUNDRED YEARS."

And with this, unless you have anything more to ask, we may conclude for to-night.

A.

A memorable judgment indeed!—No: I am very well satisfied to rest here. For I always thought that Macaulay failed in his attempt to fix upon Bacon the graver charge of selling his decrees; I always felt that the mere receiving of presents was no proof of actual corruption in that sense of the word; and I quite agree that if none or few of his decrees were reversed, the presumption is that they had been made *bonâ fide* with regard only to the merits of the cases, while if many of them were so reversed, there must have remained some positive evidence of the fact, which it seems there does not. I can well believe therefore that this judgment of his upon his own case was just. And, if so, it must be considered as something much more than just. To be able to *feel* so, was great. To be able to feel so *in silence*, was hardly less than sublime. So Job would have done if his patience had been put to that further trial.

B.

And now at least you have seen the worst of Bacon's case. But you must not proceed to judgment yet; for

you see it now at undue disadvantage. For the last four years we have been closely following the reviewer; which means that we have been looking at faults and faults only. What objects Bacon had been pursuing all this time, in what manner and with what results, we have still to inquire.

EVENING THE EIGHTEENTH.

A.

Will you give me your own version of the story now, or shall we finish the reviewer first? Here are but two pages and a half remaining.

B.

Then we had better perhaps go through with them at once. So we shall be able to clear the path of some obstructions, and I can make a shorter and clearer story of it afterwards.

A.

"We return to our narrative. The sentence of Bacon had scarcely been pronounced when it was mitigated. He was indeed sent to the Tower. But this was merely a form. In two days he was set at liberty; and soon after he retired to Gorhambury. His fine was speedily released by the Crown. He was next suffered to present himself at court; and at length in 1624 the rest of his punishment was remitted. He was now at liberty to resume his seat in the House of Lords, and he was actually summoned to the next parliament. But age, infirmity, and perhaps shame, prevented him from attending."

B.

Yes; that is the common story. But there is certainly some mistake in it. It is true that he was discharged from the Tower within a few days, and that his fine was presently

remitted. It was remitted, moreover, in such a manner as to make it even a relief to him. It was assigned to trustees who were empowered to apply it to his own benefit, and thus (the Crown having the first claim upon his property) his creditors were prevented from coming upon him and selling him up. This was done on the 21st of September 1621; nearly four months after his release from the Tower. That part of the sentence which disabled him from coming within the verge of the court (that is, within twelve miles of where the court was, which included London) continued in force for half a year longer; but it had been suspended for six weeks on the 13th of Sepember 1621, and was finally remitted in the following March. The remaining clause however, which declared him incapable of holding office in the state or sitting in parliament, seems to have continued in force till his death. There is indeed a warrant, or draft of a warrant, requiring the Attorney-General to prepare for the King's signature a pardon of the whole sentence; which appears to have been drawn up about the end of July 1624. But the warrant is not dated, and the pardon itself is nowhere to be found, so far as I can hear; and indeed it is clear, from a letter written by Bacon to Sir Humphrey May about new year's day 1625–6, that it had not been then despatched. In that letter Bacon speaks of himself as still "an outcast," and is still desiring "a pardon of the whole sentence." It is true that he had before that time received his writ for parliament, and among the peers summoned to the first parliament of Charles (according to the list given in the Parliamentary History) his name is entered in its place. But it is certain that, for some reason or other, he was not yet at liberty to attend.

"My writ for parliament (he says) I have now had twice before the time, *and that without any express restraint not to use it.* It is true that I shall not be able, in respect of my health, to attend in parliament; but yet I might make a proxy. Time hath turned envy into pity; and I have had a long cleansing week of five years' expiation and more. Sir John Bennet hath his pardon; my Lord of Somerset hath his pardon, and they say

shall sit in parliament; my Lord of Suffolk cometh to parliament, though not to council. I hope I deserve not to be the only outcast."

What was necessary besides the writ to enable him to take his place, I do not know. But since the Lords were called over on the 23rd of June 1625, and again on the 15th of February 1625–6, and his name does not appear on either occasion, either among the present or the absent, we must conclude that up to the latter date, which was within two months of his death, he was not considered a member of the House.

A.

"The government allowed him a pension of one thousand two hundred pounds a year."

B.

Say rather,—the pension of one thousand two hundred pounds which the government had allowed him for the last two or three years was *not taken away*. It was no *new* allowance, to support him under his losses. On the contrary, it must be counted among them; for it so happened that, in the beginning of the year following his sentence, there was a "general stop of pensions," and of this among the rest; and at Michaelmas 1622 it was 800*l.* in arrear.

A.

That makes a difference, to be sure.

"And his whole annual income is estimated by Mr. Montagu at two thousand five hundred pounds,—a sum which was probably above the average income of a nobleman of that generation, and which was certainly sufficient for comfort and even for splendour. Unhappily, Bacon was fond of display and unused—"

B.

Stay, stay. Here is a new imputation coming, against

which I may have occasion to protest. Let me protest at once against this representation of the condition in which Bacon was left It may be true that a *clear* income of 2500*l.*,—though not above half as much as he had been in the habit of spending for the twelve years preceding, and little more than a quarter of what he had had since he was Chancellor;—(and no man finds it easy to live comfortably upon an income suddenly reduced by half;)—it may be true, I say, that a clear income of 2500*l.* would have been enough for Bacon. But, besides the uncertain payment of his pension, you are to remember that he owed debts, of which his whole remaining income was hardly sufficient to pay the interest, and I suppose his whole property sold by auction would not have paid the principal. He had just been building Verulam House, "the most ingeniosely contrived little pile (says Aubrey) that I ever saw." It had cost him nine or ten thousand pounds. What it would have sold for then we do not know; but forty or fifty years after it was sold "to two carpenters for four hundred,"—the value of the materials. He had been improving and decorating Gorhambury with porticoes, pictures, ponds, gardens, &c. If Bushel is to be believed, he had paid not less than 3000*l.* to clear that worthy of debt. For these and such like purposes, having never been a saving man in the present, he had drawn largely upon the future; which, as he had no family to provide for, he might do properly enough. But the future suddenly stopped payment; and left him not only stripped of three-fourths of his former income, but in fact without anything which he could properly call his own. Blame him as you will for not having been more provident in his flourishing time, we need not seek for a new fault to account for his being in distress now.

"Mine own means (he wrote in the summer or autumn of 1622) through mine own improvidence are poor and weak, little better than my father left me; the grants which I have had from your Majesty are either in question or at courtesy; my dignities remain, marks of your past favour but burdens of my

present fortune; the poor remnants which I had of my former fortunes in plate or jewels, I have spread upon poor men to whom I owed, scarce leaving myself bread."

You may depend upon it that the most rigorous economy would not have enabled him to live in comfort.

A.

True; but he had the less excuse for not *practising* a rigorous economy.

B.

Habits of economy are more easily preached than acquired after sixty. But are you sure that he did not? I find that his debts at his death amounted to 22,371*l.* At the time of his fall they were said to amount to 30,000*l.* If, with an income so much reduced, he succeeded in clearing off nearly 8000*l.* within five years, he cannot have been living extravagantly.

A.

Nay, but listen.

"Unhappily Bacon was fond of display, and unused to pay minute attention to domestic affairs. He was not easily persuaded to give up any part of the magnificence to which he had been accustomed in the time of his power and prosperity. No pressure of distress could induce him to part with the woods of Gorhambury. 'I will not,' he said, 'be stripped of my feathers.'"

B.

That comes from Aubrey; and may represent, more or less accurately, something that he said at some time. But we are not told *when* he said it; and it is mentioned not in illustration of his extravagance, but as a good saying. The proposal is said indeed to have been made when he was in disfavour:—"when his Lordship was in disfavour, his neighbours hearing how much he was indebted, came to him with a motion to buy Oak-wood of him: his Lordship told them 'he would not sell his feathers;'"—but as we know

nothing more of the occasion, and nothing at all of the terms, we are hardly entitled to infer that the refusal was an act of unjustifiable extravagance. He may have had hopes of redeeming his fortune, in some more effectual way, with which the "selling of his feathers" would have interfered. A gentleman may be in great distress, and yet very properly decline to sell his coat and hat. Gorhambury was a beautiful place, fit for a nobleman's dwelling, and had a fancy value. In a will which he made during his sickness at the time of his fall, he directed that the Prince should have the first offer of it. To strip it of its woods would probably have reduced its value by much more than any one would have offered for the timber. And though he would not part with Oak-wood, we happen to know that he would have parted with the place altogether. In March 1621–2 he was certainly in hope, by parting with Gorhambury, to secure a provision from Buckingham; and in the following February he was evidently endeavouring to sell it.*

That he did at one time refuse to sell *York-house*, is a fact more in point. But he was then in good hope of being relieved from his distresses in another way; and when that hope failed, he *did* sell it.

You must mend your instance.

A.

"He travelled with so splendid an equipage and so large a retinue, that Prince Charles, who once fell in with him on the road, exclaimed with surprise,—'Well, do what we can, this man scorns to go out in snuff.'"

B.

He travelled: meaning that after his fall he was *in the habit* of travelling so. If that can be made out, I will admit it as a proof of culpable extravagance. But no such inference is warranted by the original anecdote "Returning from hunting," says the teller of the story,† "the Prince

* See Works, vi. p. 337–346.

† *Aulicus Coquinariæ.* Secret Hist. of the Court of James I., vol. ii. p. 267.

espied a coach with a goodly troop of horsemen, who it seems were gathered together to wait upon *the Chancellor* to his house at Gorhambury at the time of his *declension.* At which the Prince smiled; 'Well, do what we can (says he), this man scorns to go out like a snuff;' commending his undaunted spirit and excellent parts, not without some regret that such a man should be *falling off.*" Taken strictly, the words all indicate a declining, not a ruined, man; and would best suit the interval between the charge and the sentence, when it is very likely (being the Easter recess) that he retired for a few days to Gorhambury. At that time his retinue had not been dismissed, and his friends of the better sort would naturally gather about him. On such an occasion the Prince's remark, which was obviously understood by the reporter as implying admiration rather than censure, would have been very apt.

It is possible however that the scene occurred as late as the 22nd of June, when we are told that he removed from Fulham to Gorhambury, "having (as should seem) no manner of feeling of his fall; but continuing as vain and idle in all his humours as when he was at the highest." Such at least is Mr. Chamberlain's comment; and a comment which any one who took the common view of his case might very naturally make, upon hearing that he went away with a large attendance. But the censure which it implies is not of extravagance in an impoverished man, but of want of shame in a disgraced man. And the justice of the censure depends entirely upon the real character of his offence and the degree of humiliation which he ought to have exhibited. It is rather remarkable that Bacon himself, reviewing his own conduct a few months afterwards, conceived that his fault had lain in the very opposite direction. Speaking of the manner in which he had passed the trial of affliction, "I am not guilty to myself," he says, "of any unworthiness, except perhaps *too much softness* in the beginning of my troubles. But since, I thank God I have not lived like a drone, nor like a malcontent, nor like a man confused; but though the world hath taken her talent from

me, yet God's talent I put to use." And in fact, however vain and idle the world may have supposed him to be, we know that, within less than four months after Mr. Chamberlain wrote those words, he had finished his History of Henry the Seventh.—But this belongs to the story, as I shall tell it presently. All I insist on here is, that there is really no ground for imputing to him after his overthrow any careless extravagance, any idle waste or ostentation. You will find no anecdote of later date than these, which even points to a fault of that kind. "That Lord busies himself wholly about books," is Mr. Chamberlain's report a year and a half afterwards.

The reviewer has in fact just misplaced one little word. Instead of saying that "he travelled with so splendid an equipage, &c. that Prince Charles who *once* fell in with him,"—he should have said, "he *once* travelled with so splendid an equipage that Prince Charles who fell in with him," and so on. But this would not have answered his purpose. For the truth is, that whereas in the beginning of the last paragraph he wished to represent Bacon as very comfortably provided for, in the beginning of the next he wants to represent him as living in the middle of discomforts. The attack upon his moral character was made more effective by taking away all motive for compassion,—by showing how tenderly everybody treated him, how his sentence was only passed to be mitigated, how all that was rigorous in his punishment was immediately remitted, how he was in fact merely dismissed to enjoy a life of opulence and leisure. But the glorification of his literary character which is to follow will be much heightened by representing him as pursuing his studies under every kind of worldly discomfort and hindrance. For this purpose the "income sufficient for comfort if not for splendour" must be got rid of, and exchanged for distress, debt, dishonour, distraction, and vexation; and the transition is cleverly effected under the shadow of these two anecdotes. I admit the truth of the latter picture; but I say that there is no evidence that his distresses were brought on by any gross folly of his own

subsequent to his fall, and that they are sufficiently accounted for by the inevitable conditions of his case.

A.

Be it so.

"This carelessness and ostentation reduced him to frequent distress."

B.

Rather say, his fall entailed upon him one continued pressure of distress.

A.

"He was under the necessity of parting with York-house, and of taking up his residence, during his visits to London, at his old chambers in Gray's Inn. He had other vexations, the exact nature of which is unknown. It is evident from his will that some part of his wife's conduct had greatly disturbed and irritated him.

"But whatever might be his pecuniary difficulties, or his conjugal discomforts, the powers of his intellect still remained undiminished. Those noble studies for which he had found leisure in the midst of professional drudgery and courtly intrigues, gave to this last sad stage of his life a dignity beyond what power or titles could bestow. Impeached, convicted, sentenced,—driven with ignominy from the presence of his sovereign, shut out from the deliberations of his fellow-nobles, loaded with debt, branded with dishonour, sinking under the weight of years, sorrow, and disease,—Bacon was Bacon still."

B.

The more shame for him, if he was at all like what you have described him!

A.

"'My conceit of his person,' says Ben Jonson, very finely, 'was never increased towards him by his place or honours; but I have and do reverence him for the greatness which was only proper to himself; in that he seemed to me ever, by his work,

one of the greatest men and most worthy of admiration that had been in many ages. In his adversity I ever prayed that God would give him strength; for greatness he could not want.'"

B.

Go on.

A.

"The services which he rendered to letters—"

B.

No, no. Go on with Ben Jonson.

A.

I have read the whole extract.

B.

Then let me finish the sentence:—"neither could I ever *condole* in a word or a syllable to him, as knowing *no accident* can do harm to *virtue,* but rather serve to make it manifest." I cannot consent to have that left out.

A.

Is that part of the sentence?

B.

Yes. And I think the most important part; for it shows the impression which Bacon's *moral* character had made upon the rough old poet. The mere admiration of intellectual power could never have inspired such an emotion as that. But Ben Jonson knew *the man.*

A.

It should not have been omitted.

"The services which he rendered to letters during the last five years of his life, amidst ten thousand distractions and vexations, increase the regret with which we think on the

many years which he had wasted,—to use the words of Sir Thomas Bodley,—'on such study as was not worthy of such a student.'"

B.

That is, on the study of the Common Law.

A.

"He commenced a Digest of the Laws of England,—"

B.

Not exactly so. He *offered to undertake it* if he might have the requisite assistance. But is this one of the services which are to make us *regret* the studies in which his previous life had been employed? The project was a fruit of those very studies. Had he not been a lawyer, he would never have projected such a work; being a private student, he could not attempt to execute it. If the unaccomplished purpose makes us regret anything, it is not that he had devoted himself so much, but that he had not devoted himself more exclusively, to studies of law and state. Had he followed Sir Edward Coke's advice and confined himself to those studies—"*Instaura leges justitiamque prius*"—he would probably not only have commenced the Digest in question, but would have got it done.

A.

"He commenced a Digest of the Laws of England,—a History of England under the Princes of the House of Tudor,—a body of Natural History,—a Philosophical Romance. He made extensive and valuable additions to his Essays. He published the inestimable Treatise *de Augmentis Scientiarum*. The very trifles with which he amused himself in hours of pain and languor bore the mark of his mind. The best Jest-book in the world is that which he dictated from memory, without referring to any book, in a day on which illness had rendered him incapable of serious study."

B.

Jest-book! The "Apophthegms" is, I think, the best

book extant of its kind; it contains a greater number of memorable sayings—of good sayings so put that they stick in the memory—than can be found anywhere else within the same space. But to call it a "Jest-book" is surely to degrade it much below its pretensions.

For my own part, on reviewing this list of the produce of his five years' leisure, I cannot bring myself to regret that the rest of his life was spent chiefly in civil business. What things he *might* have done if he had devoted himself wholly to philosophy, it is indeed impossible to say. But when I look at what he did and what he was hindered from doing, I cannot help suspecting that in those legal and political works which his devotion to philosophy prevented him from completing, the world has lost more than it would have gained by the philosophical works of which his engagement in law and politics has deprived us. Ask by which of Bacon's writings the world has profited the least, as things have turned out: I think nine men out of ten will name the collections of natural history, including all the treatises which belonged to the third part of the "Instauratio." Yet this was the work on which those five years were chiefly spent, and on which his civil employments prevented him, probably, from spending many years more. Ask again which of his *projected* works one would most wish to have had completed: one man will say, the Digest of the Laws of England; another, the Maxims of the Law; a third, the treatise on Universal Justice, the beginning of which is held in such high estimation by the civil lawyers abroad; a fourth will mention the conclusion of the Novum Organum; a fifth the History of Henry the Eighth; a sixth that model of an ideal commonwealth, which was to have concluded the new Atlantis; nor will the works which he had thought of concerning the education of youth, the jurisdiction of courts, the regulation of trade, the true greatness of Britain, want their several advocates. Now these are the works which his devotion to natural history prevented him from going on with; and, with one exception, they are all works which would have derived their peculiar value

from his long conversancy with business and politics. The one exception is the remainder of the Novum Organum (the second part of the Instauratio)—which a little more leisure would probably have enabled him to complete, and which would I think have been very valuable. But it may well be doubted whether even this would have been comparable in value to some of the others which I have enumerated. If his circumstances had been such as to prevent him from writing anything more on natural philosophy after the publication of the Novum Organum, his reputation as a philosopher would probably have stood higher than it does now. If he had devoted his last five years to subjects of history, morals, politics, and law, the value of his bequest to posterity would have been greatly increased; but we should have had to thank the busy life for it quite as much as the industrious leisure.

I do not mean this for any censure of Bacon himself for his choice of work. I doubt whether any five years in any man's life better deserved to be called heroic. According to his own firm belief he was doing the work that most needed to be done, and was sacrificing the wages and the glory which he might have been earning. But I think that if at the moment of his death the future history of the inductive philosophy had been revealed to him, he would have seen that he had made a great mistake, and his uppermost regret would have been for the hours he had lost in the *sylva sylvarum*, the *historia ventorum*, the *abecedarium naturæ*, and that class of inquiries.

But I am anticipating my own story again.

A.

" The great apostle of experimental philosophy was destined to be its martyr. It had occurred to him that snow might be used with advantage for the purpose of preventing animal substances from putrefying. On a very cold day, early in the spring of the year 1626, he alighted from his coach near Highgate, in order to try the experiment. He went into a cottage, bought a fowl, and with his own hands stuffed it with snow.

While thus engaged he felt a sudden chill, and was so much indisposed that it was impossible for him to return to Gray's Inn. The Earl of Arundel, with whom he was well acquainted, had a house at Highgate. To that house Bacon was carried. The Earl was absent; but the servants who were in charge of the place showed great respect and attention to their illustrious guest. Here, after an illness of about a week, he expired early on the morning of Easter-day, 1626. His mind appears to have retained its strength and liveliness to the end. He did not forget the fowl which had caused his death. In the last letter that he ever wrote, with fingers which, as he said, could not steadily hold a pen, he did not omit to mention that the experiment of the snow had succeeded 'excellently well.'"

B.

Yes. He was not writing, however, under any apprehension of death. His illness was not an alarming one in itself; but was accidentally accompanied with so great a cold that the defluxion suffocated him.* His death appears to have been quite unexpected and sudden; which I mention because I have heard some unwarrantable inferences drawn from the circumstances of it.

A.

"Our opinion of the moral character of this great man has already been sufficiently explained. Had his life been passed in literary retirement, he would in all probability have deserved to be considered not only as a great philosopher, but as a worthy and good-natured member of society. But neither his principles nor his spirit were such as could be trusted, when strong temptations were to be resisted and serious dangers to be braved.

* "From this account," says Mr. Martin, after quoting Dr. Rawley's description of his last illness, "it appears that the malady which so rapidly brought Bacon to the grave was an inflammation of the air cells of the lungs, now called 'bronchitis.' This disease (the pathology of which was not then understood) most commonly occasions the death of old persons. In cases of this sort the proximate cause of death is that the blood ceases to be either decarbonised or oxygenated, owing to the air-cells being as it were plastered over with a mucus secreted by the membrane lining them and which the debilitated patient is unable to expectorate."

"In his will, he expressed with singular brevity, energy, dignity, and pathos, a mournful consciousness that his actions had not been such as to entitle him to the esteem of those under whose observation his life had been passed;—"

B.

Rather that the accidents of his fortune had been such as to deprive him of the chance of a just judgment from his contemporaries.

A.

"—and at the same time a proud confidence that his writings had secured for him a high and permanent place among the benefactors of mankind."

B.

Rather, a *humble* confidence that time would clear away envy and prejudice, and that his actions would at last be seen in their true light.

A.

"So at least we understand those striking words, which have been often quoted but which we must quote once more—'For my name and memory, I leave it to men's charitable speeches, and to foreign nations, and to the next age.'

"His confidence was just. From the day of his death his fame has been constantly and steadily progressive; and we have no doubt that his name will be named with reverence to the latest ages, and to the remotest ends of the civilized world."

B.

Then either the reviewer's interpretation of his character must be very wrong, or the reverence of the ages will be shamefully misplaced. Name with *reverence* the name of a man who, being entrusted with the highest gifts of heaven, abused them for the poorest purposes of earth,—hired them out for guineas, places, and titles, in the service of injustice, covetousness, and oppression! Let us hope that Macaulay

does not really believe in the fidelity of the portrait which he has himself drawn; that he does not feel in his heart towards Bacon as he must have felt towards such a man as he vainly flatters himself that he has proved Bacon to be. Let us hope that his *impression* is more just than his *opinion*,—a thing which often happens,—or that he would not have so abused the word reverence. And with this charitable construction let us bid him good-bye.

A.

With all my heart: and may he be more worthily employed when we next meet!

And now let me have your version of the story; beginning, where you left off, with Bacon's elevation to the seals.

B.

Then you must first recover your recollection of the real case of the kingdom; which was still unprovided for. The embarrassment of the Crown between an empty exchequer and an exacting and unruly parliament was as great, or almost as great, as ever; and the troubles of the times were fast proceeding towards an issue in which England would not be able to keep her place in the world unless the exchequer were by some means replenished. That old riddle was still unsolved when Bacon became Lord Keeper; and was still the master-difficulty of the time, round which all other difficulties were continually gathering.

Next I must warn you not to expect from me a smooth or complete story of Bacon's proceedings while he held the seals; for unfortunately the history of this period has not been told by any impartial contemporary with competent abilities for the task and with access to the necessary information; and though Bacon's own letters on business of state are more numerous for this portion of his life than for any other, yet the series is far from complete; several of the most material being lost, and much of the most important business

having been transacted in personal interviews between him and the King, which were now necessarily frequent;—not to add that a large portion of his life during these years was absorbed by the current business of the Chancery; in the records of which it lies buried far out of my reach. Still I think that if we make a fair use of such materials as we have, we shall find that his time was occupied in something very different from corruption and servility and paltry intrigues.

To begin then.—That during this period he committed some positive faults I have acknowledged; and it may perhaps appear upon investigation that he committed other negative faults in allowing himself to be made an instrument for carrying out courses of policy which he did not approve, or in not taking more effectual measures for forcing the adoption of those which he did approve; and you may think that, though for errors of this latter kind he has hitherto been excused on account of the subordinate position in which he stood, yet that excuse cannot be pleaded now when he stands at last in the place of highest authority (under the Crown) in the land. Now it is true that the Lord Chancellor was the greatest officer in the kingdom,—*except the King.* But in judging the conduct of a Lord Chancellor in the beginning of the seventeenth century, it is very necessary to remember how very large an exception that was. If Bacon ever imagined that when he stood highest among the King's Council, he should be able to govern the King, he was very soon undeceived. He was at once reminded of his true position, in a matter which though small in itself, had so large a signification that it is worth mentioning here. Before the King proceeded on his Scotch journey, he had resolved with his Council (among other things) that a proclamation should be issued, ordering the gentry from London into the country. The Council, finding that after the departure of the court London was emptying fast enough of its own accord, thought it better to suspend the proclamation, and sent word to the King that they had done so. Upon this he "broke out into great

choler, saying that he was contemned and his commandments neglected," * and returned answer that their reasons for changing the resolution were very weak, and that he would have the proclamation proceed without delay. This peremptory message was crossed on the road by a letter from Bacon to Buckingham (30th March 1617) in which he alluded to the stay of the proclamation in terms which show that he had fully concurred with the Council, and that he anticipated no objection on the part of the King.

"For the proclamation" (he said) "that lieutenants (not being councillors), deputy-lieutenants, justices of the peace, and gentlemen of quality, should depart the city and reside in their countries; we find the city so dead of company of that kind for the present, as we account it *out of season to command that which is already done.* But after men have attended their business the two next terms,—in the end of Trinity-term (according to the custom) when the justices attend at the Star Chamber, I shall give a charge concerning the same, and that shall be corroborated by a proclamation if cause be."

Reading this passage, the King could have no doubt that Bacon's judgment was decidedly against the issuing of that proclamation. But mark the effect.

"His Majesty"—so Sir Thomas Lake wrote to Secretary Winwood on the 3rd of April †—"hath commanded me again to send unto you about the proclamation concerning which I wrote last unto you. It seemeth my Lord Keeper hath written to my Lord of Buckingham something concerning it. But his Majesty hath commanded me to let you understand that obedience is better than sacrifice, and that *he knoweth he is King of England;* and that however people be now out of town, they may return; at least the proclamation can do no hurt, but will manifest his care. I cannot well by letter tell you how much he is moved at these things, but *I wish you to speak with my Lord Keeper and that it may be despatched without any more excuses.*"

This shows how narrow were the limits of Bacon's *authority* in matters of this kind; how little power he had

* Sir T. Lake to Secretary Winwood. State Paper Office.
† State Paper Office.

to oppose the King's resolutions when the King had a mind as well as a right to resolve for himself.

But there were limits also to his *duty* in that respect, as he understood it, of which a modern reader may need to be informed. In those days, as I have more than once reminded you, the King was really the chief magistrate; as distinctly responsible for his actions as a prime minister is now; and where the responsibility is, there the power must be also. Accordingly the duty of a King's servant was understood by Bacon in the same sense in which it was understood by the great ministers under whom he had been brought up. Burghley, writing two or three years before his death to his son, and expressing his regret at some proceeding of the Queen's, lays down the rule of his own duty thus:—

"I do hold, and will always, this course in such matters as I differ in opinion from her Majesty. As long as I may be allowed to give advice, I will not change my opinion by affirming the contrary; for that were to offend God, to whom I am sworn first. But as a servant I will obey her Majesty's commandment, and no wise contrary the same; presuming that, she being God's chief minister here, it shall be God's will to have her commandments obeyed, after that I have performed my duty as a counsellor; and shall in my heart wish her commandments to have such successes as I am sure she intendeth."

This theory of ministerial duty, the only just theory as things then stood, was adopted and acted on by Bacon in its full extent. He thought it his duty not merely to *submit* to the King's resolutions when they were distinctly and finally taken, but also to take care that his resolutions should be really and freely his own. Some counsellors, while affecting to wait upon their master's determination, will nevertheless so contrive the matter as to leave him in fact no choice. Bacon did not think this right. He thought it his duty not to "urge his counsels so as to *engage* his master;" but to submit "free counsel" to his master's "free grace and pleasure;" and then, when the decision was taken, to do his best to carry it out. A case

occurred shortly after he received the seals which affords a good example of this. Among the resolutions previously taken by the King and Council, one of the most important was, that the negotiations for the Spanish match should be proceeded with. How far Bacon had been from recommending that measure, we have already seen. We have seen that he had even advised the King to let the rumour of it be held out *in terrorem*, as the best use to which it could be turned. However, a few days before he was made Lord Keeper, while he was yet the youngest and lowest member of the Council, the whole state of the negotiation had been laid before a selected number of the board, and they had "by consent agreed that his Majesty might with honour enter into a treaty of marriage," * etc. Whether Bacon in his own judgment coincided with the rest in this resolution, I do not know; for it may be that the business had already gone too far to be broken off with honour at that stage; but, being taken, he was quite of the mind that they ought to unite in making the best of it; and, about two months after, in sending the King an account of council-business, he expressed himself distinctly to that effect.

"But to speak of the main business," (he says,) "which is the match with Spain, the King knoweth my mind by a former letter that I would be glad it proceeded with an united council: *not but that votes and thoughts are to be free; but yet after a King hath resolved, all men ought to co-operate, and to be neither active nor much locutive* in oppositum; *especially where a few severing from the rest may hurt the business* in foro famæ."

The freedom of his "vote and thought" Bacon always retained; at least I have not met with an expression anywhere from which I can infer that he ever either hoped or affected to hope for any good to come from this match. What part he took in it at a later period, I will tell you presently. I mention this now only to show you what was

* Harl. MSS. 1323, fo. 263. "The sum of his Majesty's speech to some of his council on Sunday the 2nd of March concerning the Prince's marriage and some other occurrences," etc.

the principle on which he professed and thought it his duty to act in such cases; and therefore that you are not to hold him responsible for everything which was done during his administration, no nor even for everything which was done by his ministerial agency, as if it had been done with his advice or consent. Much was done which he could not have resisted to any purpose; much also which on principle he forbore to resist.

A due allowance for this will materially reduce the list of errors in the general administration that can be fairly laid to his charge; and for the errors which were indeed his own, some allowance ought perhaps to be made on account of the multitude of his businesses. Where there is too much to do, something will be left undone. As Chancellor, Bacon had to pronounce about two thousand decrees or orders in the year; to appoint and overlook the whole body of justices of the peace; and to dispense the patronage of all livings under 20*l.* a year in the King's books. As the first officer in the kingdom, he had to take a principal part in every business of consequence that passed the Star Chamber or the Council-board. As a Commissioner of the Treasury, he had, during more than half the time, to add to the rest the special functions of a Lord Treasurer. When he retired into the country for a holiday, he found the "Novum Organum" waiting for him, with demands upon his attention as importunate and irresistible as any of the businesses he had left in town. Working under such pressure, the most vigilant conscience will commit oversights; errors will be committed, and pass undetected or uncondemned for want of time to make a due impression; resolutions of amendment will be formed, and dropped for want of leisure to take root.

So much by way of preface. Let us now try to make out what he was really doing or endeavouring to do while he held the seals; "what he *first sought* and what was *principal in his intentions.*"

And first for the particular duties of his place as Chancellor.—The great mass of his labours in that office lie

buried, as I have said, in the records of the court; where I cannot get at them. That little or no memory of his decrees has been preserved in the ordinary course of business proves nothing. After his fall, no one would appeal to him as an *authority;*—for the answer would be inevitable, "you are quoting a corrupt Judge." It is true that the issue of his impeachment affords no ground for believing that his decrees were actually unjust; rather the contrary: but it brought them all under suspicion, and so there was an end of their authority.

> "The painful warrior, famoused for worth,
> After a thousand victories once foil'd,
> Is from the book of honour razed forth,
> And all the rest forgot for which he toil'd."

And a Judge once suspected is in a worse case than the warrior once beaten; for in spite of the one defeat, the former victories must pass for victories still; whereas the one suspected judgment reflects suspicion upon all the rest. From the silence of history therefore as to the general character of Bacon's labours in Chancery, I can infer nothing either way.

But there are two facts from which I am inclined to infer a good deal: one is, that when he entered upon his office he certainly intended to make great reforms and improvements in the administration of it; and the other is, that almost up to the very time of his fall he certainly believed that his conduct in it had been exemplary.

A.

Come, come, your wish must have been father to that conclusion.

B.

Not so. The conclusion forced itself on me, and for a good while I resisted it, as unintelligible. I had been used to think that a man like Bacon might easily fall into some abuses of the times, from facility of nature or inattention to

small matters or carelessness about money. I could fancy him to have been in some things no better than his neighbours, and to have been nevertheless a man of high principles in the main, and patriotic purposes. We know that there are in fact few men who do not keep some little corner in their character sacred to self-indulgence,—some humour or weakness for which they do not call themselves to a strict account. But though I could fancy him following a bad example, I could not understand how he should at the same time have thought that he was setting a good one; or how, when his conduct in taking money from suitors was first called in question, he could have had any doubt as to his vulnerability on that point. Yet I could not help perceiving that his first feeling on hearing of the charges that were to be brought against him was mere surprise and incredulity. He would not, it seemed, believe that he could be in danger. "I would not have my friends," he said, "though I know it to be out of love, too apprehensive either of me or for me: for I thank God my ways are sound and good, and I hope God will bless me in them." And again, only a day before the charges were formally reported to the House of Commons,—"I know I have clean hands and a clean heart, and I hope a clean house for friends or servants. But Job himself, or whoever was the justest Judge, by such hunting for matters against him as hath been used against me, may for a time seem foul; specially in a time when greatness is the mark and accusation is the game. And if this be to be a Chancellor, I think if the great seal lay upon Hounslow Heath there is nobody would take it up." That there could be any just grounds for questioning his personal honour and integrity, he seems to have been still unable to imagine; which, if he had been habitually and consciously indulging in what he knew to be an illegal abuse, even though it were an abuse sanctioned by the custom of his predecessors, it would be difficult to account for. This for a long time puzzled me, insomuch that I tried to find some other meaning in the words; but I could not get rid of the impression that, instead of being alarmed by the

news, he was only surprised, and instead of thinking the charge formidable, he only thought it preposterous.

A.

The blindness of custom and security!

B.

I thought of that too. But *security*, in the sense you mean, he had not enjoyed. His conduct as a Judge had been twice complained of by discontented suitors; nor had the complaints been stifled or bought off. On both occasions the complainant had been heard before others of the Council, Bacon being absent, and Sir Edward Coke being present. It is true that neither of them succeeded in making good their charges against him, and both were punished for the contempt. But had he been conscious of any blots in his tables, such proceedings must have effectually dispelled any sense of *security*.

A.

And how did you make it out?

B.

Why, I remembered that when I used to play at chess I always made the grossest oversights when I was most intent upon playing my best; my attention being absorbed in elaborate arrangements for attack or defence on one side of the board, I found myself suddenly checkmated by a simple move on the other. And it occurred to me that a Chancellor who should be intent upon the correction of the greater abuses and obstructions of his court, and the exclusion of new ones which the times threatened to bring in,—who should be devoting himself mainly to this work, and proceeding in it successfully,—might possibly leave a few of the old and comparatively unimportant ones uncorrected, and yet live in the persuasion that he was discharging his duty in an exemplary manner. It occurred to me that if Bacon had been employing his best wit and industry to cut

off needless delays, expenses and vexations, (which were the besetting and increasing evils of the Chancery,) and had employed them with apparent success, he might have neglected to take due security for the protection of his personal integrity from suspicion, (that being the side on which he knew himself to be least vulnerable,) without being aware of the danger to which he was exposing himself. The error was gross and obvious when pointed out, but it may have been an error of inattention, and the discovery may have astonished him, for all that.

Now when I turn to the speech which he made on taking his place in Chancery, in which he gave a sketch of the principal effects at which he meant to aim, and the principal orders, regulations, and resolutions which he had taken for the purpose of securing them, I find that it is directed almost wholly to the means of preventing needless multiplication, prolongation, uncertainty, and expense of suits; and when I turn to such notices as I can meet with of the results of his administration, I see no reason to doubt that he had been pursuing that object both with industry and with success. I find him twice within that year reporting with evident exultation that he had cleared off all arrears.

"This day," he writes on the 8th of June, 1617, "I have made even with the business of the kingdom for common justice. Not one cause unheard. The lawyers drawn dry of all the motions they were to make. Not one petition unanswered. And this I think could not be said in our age before. . . . And all this while I have been a little unperfect in my foot. But I have taken pains more like the beast with four legs, than like a man with scarce two legs."

And again on the 6th of December,—

"This very evening I have made even with the casues of Chancery; and comparing [them] with the causes heard by my Lord that dead is of Michaelmas was twelvemonth, I find them to be double so many and one more: besides that the causes that I despatch do seldom turn upon me again as his many times did."

If this went on, which I know no cause to doubt, it was not without reason that he thought himself, "for his honest and true intentions to state and justice, not the worst of Chancellors." I find him also, about a year after, issuing that large body of ordinances for the better administration of justice in the Chancery, which I am told was the first attempt to reduce the practice of the court to a regular system, and forms the basis upon which it rests at this day.

Now supposing him to have been absorbed in labours of this kind, I can fancy him to have been inattentive to some of his other duties,—I can fancy him to have fallen into a certain—what shall I call it?—a certain *moral negligence*, in allowing suitors to express their gratitude by gifts,—without distinctly feeling how wrong it was. It is true that if he thought about it at all, he must have thought it wrong; and the thought could hardly fail at one time or another to cross his mind; and therefore I can not hold him altogether excused. He *ought* no doubt, the moment that thought crossed his mind, to have put a stop to the practice at once; just as Doctor Johnson, when he distinctly perceived that late rising was a bad habit, *ought* to have left it off upon the instant. But I can fancy that, while his mind was intent upon more urgent and important things, such a suggestion might pass through it without making a strong impression, and so the fault might not only be admitted then, but afterwards when he had reformed it (for the fact that his offences in this kind were two years old at the time of his impeachment entitles us to consider him as even in this point a reformer) might even be forgotten.

But there is another way in which the oversight may be accounted for. This practice of receiving voluntary gifts (always presuming that they were really voluntary and no-way in the nature of a bargain) was not the greatest abuse of the times, nor the greatest temptation which Bacon had to resist. The great and growing abuse of the times was the *sale of offices*. It had become usual for men of very good reputation to pay large sums for lucrative appoint-

ments, to those who had interest enough to procure them. We read of 5000*l.* paid for a Secretaryship of State, 20,000*l.* for the place of Lord Treasurer; even of 30,000*l.* offered for the Lord Chancellor's place; and though these facts rest on rumours which cannot be taken for authentic evidence, yet so many reports of the kind are circulated so familiarly and confidently by the news-writers of the day, that one can hardly doubt the prevalence of the abuse. Now during the four years of Bacon's Chancellorship, he must have had, both directly in virtue of his office and indirectly through his influence with the King and Buckingham, a great deal of very valuable patronage to dispense; and had he been disposed to sell it there can be little doubt that he would have had plenty of offers. Yet in this particular his conduct so far as I can discover was absolutely without blame: I have not met with so much as a rumour which connects him with any transaction of the kind. And when a man has been consciously and steadily setting his face against the greater abuse, he may easily overlook the smaller one.

Upon the whole, therefore, when I put all these circumstances together—his great personal diligence in hearing and deciding causes; in devising orders and regulations to protect the suitor from delays, vexations, expenses, uncertainties, and unnecessary appeals; his endeavours to reduce the practice of the court to a regular and permanent system; his steady resistance to prevailing and great abuses in the dispensation of patronage (the evidence of which, though negative, may be considered as almost conclusive); together with the final reformation of that lesser abuse into which he had fallen at first, but from which he appears to have emancipated himself before two years were out;—I can well believe that his *intentions* had been all along virtuous and patriotic; that he was in the main a conscientious, public-spirited, and exemplary Chancellor; that the hours which he had spent in strenuous exertion to discharge his office faithfully were so many, compared with those in which his diligence and vigilance relaxed or slept, that his career when he looked back upon it seemed almost like one earnest

endeavour to do good; and that when in writing some three or four years after his fall to Bishop Andrewes (than whom no man had had better means of appreciating his character and course of life), he spoke of himself as having always loved his own country "insomuch as though his place had been far above his deserts, yet his thoughts and cares concerning the good thereof were beyond and over and above his place," he was using no vain words, but recording the deliberate testimony of his conscience.

A.

Well, it would be very agreeable to think so.

B.

So much for his discharge of the judicial functions of his office; those which depended upon himself alone.

Let us now consider how he acquitted himself as a Councillor of State.

I have already given you some light as to his labours for the rectification of the King's finances; which was the principal and by far the most urgent problem of home-policy which the times presented. And I do not know that I need enter further into that subject, except to tell you how much had been accomplished, and how the King's case now stood.

At the death of Salisbury in 1612, the Crown was 500,000*l.* in debt; and the ordinary annual revenue fell short of the ordinary annual expenditure by 160,000*l.* In the beginning of 1617, about the time Bacon received the seals, the ordinary revenue and expenditure had been brought nearly to an equality,—the receipts a little exceeding the expenses, but not much. What the debt then amounted to I have not been able to ascertain; but it was found necessary about the same time to borrow another 100,000*l.* In the following November the Council were directed to consider of the means of retrenching the expenses of the household; and in July 1618 the Treasurership was put in commission. The next year I find from a state-

ment in Sir H. Yelverton's handwriting, that the ordinary revenue exceeded the ordinary expenditure by 47,000*l.*; but the debt was then 800,000*l.* In January 1619–20, the excess of the receipts over the issues had risen to 61,555*l.*; all of which was free to be employed for the discharge of pressing extraordinaries. On the 25th of March following the debt was only 711,026*l.*; and on the 29th of September it had been further reduced (if I understand the record right) to 611,525*l.* Soon after which a new Lord Treasurer was appointed, and my information ceases. Some other particulars might be gathered from Bacon's correspondence, but not sufficient to make out a complete statement; and this is enough to show how serious the embarrassment continued to be, in spite of all efforts to relieve it, and how slowly the cure must proceed if it were to be wrought by the improvement and husbandry of the ordinary resources of the Crown.

Bacon, you will remember, had never hoped for any effectual relief by that means, but had always encouraged the King to look to his parliament for the remedy. The question then occurs, why was the trial of that remedy so long delayed? Unfortunately, I have not been able to find any distinct information on this head. But it is easy to believe that the King would be rather shy of risking an experiment which had formerly succeeded so ill; that he would readily listen to the arguments of those who dissuaded it; that many of the persons about him, Buckingham among the rest, might naturally be averse from a measure which seemed likely enough to obstruct the current of their own fortunes; and that it was in fact and in true policy an experiment too hazardous to be tried while any question was pending that was likely to raise popular excitement in opposition to the government. Now on looking through the records of that period I confess I cannot fix upon a time earlier than the autumn of 1620 which would have been altogether propitious for the enterprise,—unless the King could have been persuaded to postpone his favourite Scotch expedition, or to break off the negotiations for his

favourite Spanish match. Till that time there was always either some question pending which would have brought the King into collision with the popular party, or some business on foot which engrossed the attention of the Council and could not be put off. The most favourable conjuncture was in 1615, when Bacon addressed to the King the long letter of advice for calling a parliament, which we have read; and at that time the question was brought formally under the consideration of the Council. But their deliberations were interrupted by the discovery of the murder of Sir Thomas Overbury, and the proceedings consequent; which were not concluded till the summer of 1616. Then came the King's journey to Scotland, and a resolution to postpone the consideration of a parliament till his return; which brings us to the autumn of 1617. In the mean time Sir John Digby had been despatched to Spain, to negotiate that unpopular treaty, and reports were current in October of letters received from him with large promises of success,—which excited manifest dissatisfaction in the English people. While the people were in a humour to go one way, and the King was pledged to go another, while some of the Council were openly dissentient, and others known to be dissentient in their hearts,—the election and calling together of a new parliament could only have ended in another disastrous breach. There were probably some grave and good reasons, both political and religious, against an alliance between England and Spain; but the popular opposition to it took the form of an epidemic rage, with which reason had no more to do than with a modern anti-popery cry. I am persuaded that at that time the most unpopular man in England might have made himself the most popular by merely committing some gross outrage against Spain, no matter how unjustifiable. And the nature and violence of the feeling was well illustrated in the autumn following—the autumn of 1618—by the canonization of Sir Walter Raleigh; who being executed for grossly abusing a king's commission for purposes in the commission itself expressly forbidden,—those purposes including the destruction of an unoffending town

belonging to a friendly power, and thereby endangering the peace, by breaking the law, of nations,—was from that moment glorified in the popular imagination, and regarded as little less than a martyred saint; in which character, so widely and deeply did the impression sink in the popular mind, he has been worshipped ever since,—merely because the offence for which he suffered was against Spain.

A.

I thought Raleigh had been executed for his former crime of treason, then sixteen years old.

B.

He was executed *upon the old sentence;* because the lawyers were all of opinion that so long as that sentence remained in force, he could not be legally *tried* for a new offence; but it was not really for the old offence that he was executed; it was because he had committed a new offence, which rendered him no longer deserving of mercy. James had refused to *pardon* him before he went on his expedition,—injudiciously, I think, but explicitly—for the express purpose of "holding him upon his good behaviour," and "disauthorizing him with those that were under his command, in case he should attempt to exceed his commission, *and reserving him to the justice of the law, if by new offences he should make himself indign of former mercies.*" *

However, I cannot stay now to discuss the popular misrepresentations concerning the death of Raleigh, with which all our modern histories and biographies are overrun. By far the best and least partial account of Raleigh's life and death that I have seen is to be found in the Edinburgh Review for April 1840 written by Professor Napier. Impartial indeed, in one sense, it is not; for Raleigh was evidently a great favourite with the writer when he began, the admissions to his disadvantage are made with manifest reluctance, and the traces of original predilection are visible throughout in a certain discrepancy between the statement

* King's Declaration, p. 25.

of the case and the judgment upon it. But the narrative of the facts is throughout careful and conscientious, and for the most part accurate; insomuch that it will enable you to correct the errors of judgment for yourself; and to this I refer you. In the mean time, if you want to know how passionately prejudiced people then were in favour of Raleigh—that is, of any one who stood in opposition to Spain, for there was no popular prejudice in favour of Raleigh personally,—I would only ask you to imagine the case reversed. Let England and Spain exchange positions, the case remaining otherwise the same. Suppose some Spanish adventurer, abusing the King of Spain's commission, had landed in Virginia, in search (real or pretended) of a mine; had attacked, burned, and sacked one of our settlements there, had killed the governor, and dispersed the inhabitants. Would not the whole English people have been clamorous for the punishment of that man? Would not the Spanish government have been bound to punish him? Would not England have been justified, if they refused, in going to war upon such a quarrel? Yet this was precisely what Raleigh had done; what the Spanish ambassador had foretold that he would do; what the King of England had declared that he should not and durst not do, knowing as he did that it would be at the peril of his life, which he knew to hang solely upon the King's mercy. While the nation was in the humour to regard such a case as a murder and a martyrdom, no good could be expected from calling a parliament.*

In the following year a new question arose, which irritated still further this popular passion against Spain, and tended to set the King still further at variance not only with the people but also with the majority of his Council. News came towards the end of August 1619 of an insurrection in Bohemia, and that the States had renounced the king whom they had previously elected, and had offered the crown to the Elector Palatine, James's son-

* After carefully reading Edwards's Life of Raleigh (Macmillan, 1868), I find nothing in this passage which seems to me to require any alteration.

in-law. The Elector sent to ask James's advice whether he should accept the offer. A solemn consultation was on the point of being held on the subject, when fresh news arrived that he had already accepted it; which turned it into a question whether the King should engage himself to embrace his cause. The nation generally were eager in the affirmative, and the Council, it seems, were inclined the same way. But James, having an opinion of his own, "prevented their advices," we are told, "with a plain declaration that he would *not* engage himself into the quarrel before he was satisfied of the justice of the States of Bohemia's proceedings in renouncing of Ferdinand, whom they had formerly chosen for their king." * In the end he consented only to allow a levy of volunteers. So here again, whether he were right or wrong in his decision, the conjuncture was altogether unseasonable for trying another parliament.

Meanwhile the new king of Bohemia, young and inexperienced, and quite unequal to the position which he had rashly undertaken, found himself involved in a losing struggle against all the great Catholic powers, whom the Bohemian movement had at once roused and united; and in the course of this he was rapidly driven not only from his new kingdom and doubtful title, but also from his hereditary possession the Palatinate, to which his title was unquestionable, and in which England, in the person of the King's grand-children, had a direct interest. Towards the end of August 1620 news came that the Spanish general Spinola had entered upon the Lower Palatinate; which was soon followed by fresh intelligence that he was rapidly overrunning and taking possession of the whole country. This invasion removed all scruple as to the right of the quarrel; and a resolution was immediately taken to engage in an auxiliary war for the defence and recovery of the Palatinate; and this resolution, by bringing King, Council, and people into harmony, removed at last all obstruction to the calling of a parliament. On the 2nd of October

* Court and Times of James I. vol. ii. p. 189.

Bacon had the great satisfaction of receiving directions from the King to "advise with the two Chief Justices, old parliament-men, and Sir Edward Coke, who was also their senior in that school, and Sir Randal Crew the last speaker, and such other Judges as they should think fit, touching what might in true policy, without packing or degenerate arts, prepare to a parliament, in case his Majesty should resolve of one to be held." Bacon took up the subject with alacrity. "All your Majesty's business (he said) is *super cor meum*, for I lay it to heart; but this is *secundum cor meum*. And yet, as I shall do your Majesty all possible good service in it, so I am far from seeking to impropriate to myself the thanks, but shall be *omnibus omnia* (as St. Paul saith) to attain your Majesty's ends." About the same time a benevolence or voluntary contribution for the relief of the Palatinate was set on foot. The resolution to call a parliament followed in a few days. A proclamation was issued. The elections proceeded. And in the following February the Houses met,—with such result, as far as Bacon's fortunes and our present subject are concerned, as we have already seen. There seems to be no reason therefore for ascribing this long delay in adopting the true constitutional remedy for the King's affairs to any error or backwardness on Bacon's part, nor indeed to any fault except that of not having more influence with the King. The postponement of the right remedy was rendered necessary by the policy which the King himself insisted on; the adoption of those other more objectionable remedies could hardly be avoided while the right one was postponed.

Now for the part which Bacon took with reference to the Spanish treaty.

You have seen that his judgment was against the match, but that when it was resolved on, he thought it his duty to co-operate and make the best of it;* and it is a question of some interest, in what way he proposed to improve the occasion, and for what ends. Here again I am forced to

* See above, pp. 178, 368.

gather my information from incidental and fragmentary notices. Among some of his papers that happen to have survived, however, I find footsteps of some great designs, which, though they have left no trace in the history of the time, are of no small significance in tracing his personal views and purposes.

I have mentioned the resolution of the Councillors to whom the question was referred just before Bacon was made Lord Keeper, for proceeding with the negotiation. From the terms of that resolution I think it may be inferred, that they did not expect it to succeed, but thought that, if fairly proceeded with on the King's part, some occasion would probably turn up for breaking it off with honour and advantage. "It was very likely," says the memorandum,* "that the *breach*, if any were, could not be but upon *some material point of religion;* which if it fell out could not be any dishonour to his Majesty, but on the contrary a great reputation, both with his subjects here at home and with his friends of the reformed religion in foreign parts." Such being the state of the negotiation when Bacon had to take it up as a leading Councillor, true policy required that it should be guided with a view to both issues, so that some good might be secured either way—good to the general state of Christendom, if Spain were disposed to act sincerely for that end; good to the particular interests of England and of Protestantism, if she were not.

Now that there was any inherent impracticability in an alliance between the leaders of Popery and Protestantism for some of the many objects in which they still had a common interest, I suppose hardly any man will maintain now; whatever may have been thought in the beginning of the seventeenth century, when the reformed religion was yet young and full of hope, and the final issue of the struggle was hidden from all men's eyes. We now know by practical experience that Popery and Protestantism can live together in the same world without trying to cut each other's throat, that they may work peaceably together for many ends

* Harl. MSS. 1323, fo. 263.

common to both, and that the condition of the nations may be much the better by means of their co-operation. If there was no such hope at that time, it was not because the thing itself was impracticable, but because so few people believed it to be practicable. Bacon, I take it, was one of the few, and seems to have thought the experiment of an honourable co-operation between England and Spain for the peace and prosperity of Christendom, though not hopeful, yet (as things stood) worth trying; careful watch being nevertheless kept upon the movements of Spain in order that the first decisive indication of false dealing on her part, whereby that hope would be frustrated, might be met by decisive measures for uniting and strengthening the Protestant nations in their own defence against the common enemy. These appear to have been the two branches of his policy at this conjuncture.

For the first his views are distinctly enough explained in a sheet of "additional instructions to Sir John Digby," which are printed in his Works.* Sir John Digby was then on the point of proceeding as ambassador to Spain, partly to negotiate the match, partly to effect some arrangement for the suppression of the pirates of Algiers and Tunis, who had become very troublesome. On the 23rd of March, 1616–17, while the King was on his way to Scotland, Bacon wrote to him as follows :—

"My continual meditations upon your Majesty's service and greatness have, amongst other things, produced this paper enclosed; which I most humbly pray your Majesty to excuse, being that which in my judgment I think to be good both *de vero* and *ad populum*.

"A remembrance additional to the instructions of Sir John Digby.

"Besides your instructions directory to the substance of the main errand, we would have you in the whole carriage and passages of your negotiation, as well as with the King himself as the Duke of Lerma and council there, intermix discourse upon fit occasions, that may express ourselves to the effect following:

* Vol. vi. p. 138.

"That you doubt not but that both Kings for that which concerns religion will proceed sincerely, both being entire and perfect in their own belief and way; but that there are so many noble and excellent effects which are equally acceptable to both religions, and for the good and happiness of the Christian world, which may arise of this conjunction, as the union of both Kings in actions of estate may make the difference in religion as laid aside and almost forgotten.

"As first that it will be a means utterly to extinguish and extirpate pirates, which are the common enemies of mankind, and do so much infest Europe at this time.

"Also, that it may be a beginning and seed (for the like actions before have had less beginnings) of a holy war against the Turk, whereunto it seems the events of time do invite Christian kings in respect of the great corruption and relaxation of discipline of war in that empire; and much more in respect of the utter ruin and enervation of the Grand Signor's navy and forces by sea; which openeth a way (without congregating vast armies by land) to suffocate and starve Constantinople, and thereby to put those provinces into mutiny and insurrection."

This subject of a holy war, by the way, seems to have been much in Bacon's thoughts about this time. A few years after, he began an elaborate discussion of the whole question, in the form of a dialogue; but unluckily he did not proceed further than the opening of it by one of the interlocutors who sustains the character of a Roman Catholic zealot, and we cannot therefore infer from it what his own judgment was. His general opinion, however, is stated incidentally in his "Consideration of a war with Spain" (written a year or two later), and is important; namely, that "*offensive wars for religion* are seldom to be approved, *or never except there be some mixture of civil titles.*" But considering the offensive relation in which the Turk then stood towards Christendom, and indeed towards all Christian civilization, very sufficient causes of war were likely enough to arise. This by the way; the instruction proceeds:—

"Also, that by the same conjunction there will be erected a tribunal or prætorian power to decide the controversies which

may arise amongst the princes and estates of Christendom without effusion of Christian blood; forsomuch as any estate of Christendom will hardly recede from that which the two Kings shall mediate or determine.

"Also, that whereas there doth as it were creep upon the ground a disposition in some places to make popular estates and leagues to the disadvantage of monarchies; the conjunction of the two Kings will be able to stop and impedite the growth of any such evil.

"These discourses you shall do well frequently to beat upon, and therewithal to fill up the spaces of the active part of your negotiation; representing that it stands well with the greatness and majesty of the two Kings to extend their cogitations and the influence of their government not only to their own subjects, but to the state of the whole world besides, specially the Christian portion thereof."

What the King said to these instructions I do not know, or in what spirit Sir John Digby pursued them. But I think we may conclude that, if the two kingdoms could have formed an alliance for such purposes as these, the beneficial effects of it would have been felt throughout Europe to this day. The world, however, was too young then to listen to such counsels. The enterprise against the pirates was afterwards undertaken by England alone at her own charge; though the success was not proportionate to the care used in taking advice and making preparations. And as for anything that was to be done by the co-operation of Spain for European objects, it became gradually more and more clear that no such thing was to be expected of her; and though she was fertile of promises and excuses, which those of James's Councillors who had advised the match would naturally make the most of, yet the rest only saw in them, and saw perhaps not without satisfaction, the confirmation of their own forebodings.

And this brings me to the second or alternative branch of Bacon's policy, the consideration of which, if I understand it rightly, is important in more ways than one. In a volume of manuscripts in the British Museum, consisting entirely of Bacon's compositions,—chiefly those which were

published by Rawley in the "Resuscitatio,"—I find one with this title: "A short view of Great Britain and Spain, by Sir Francis Bacon." It has not been printed; probaby because it was thought to be superseded by the larger treatise which he wrote afterwards on the question of a war with Spain. But if taken in connection with the circumstances of the time at which I suppose it to have been written, it has a peculiar interest for us. Unfortunately the manuscript bears no date; nor does the paper itself contain any allusion by which the date can be precisely ascertained. Judging, however, from the mention of some things and the no-mention of others, I think we may confidently conclude that it was not written earlier than March 1618–19, nor later than August 1620. It seems to be a hasty memorandum either for a speech in Council or for a letter of advice to the King; and its object is to recommend nothing less than a joint enterprise between Great Britain and the United Provinces (whose twelve years' truce was about shortly to expire) *to cut Spain off from the treasure of the Indies.* He begins by showing that while the power of England was greater then than it was in Queen Elizabeth's time, that of Spain was not increased; that such as it was, it depended entirely upon the wealth she drew from the Indies; and that "but for the Indies the King of Spain were the poorest king of Europe."

"Now it serves the better" (he proceeds) "for the finding of his weakness or strength, to inquire whether he be able to stand upon terms of defiance and yet hold the Indies? I think not. His Majesty of England joining with the States of the United Provinces is of power to raise two armadas; the one to block up Spain, the other to block up the Indies. The least success that may be hoped for out of this enterprise is the cutting off his returns, which would beggar him. The fear of this project was the thing that stopped his greatness to the United Provinces, when he departed with his pretence of sovereignty to them; and that fear is an ague he is not yet cured of. This is a right design and a great one; such an one as I wish we had all the treasures and all the valiant blood of our ancestors to bestow upon; for the expense whereof we

have nothing to show now but the two poor islands of Jersey and Guernsey. And to say truth in that case * if all the lands that belong to the Crown of England were offered to his Majesty, I should not give my advice to receive them; much less to conquer them.

"Now for the disposition of the Low Country men, I assure myself there cannot be a thing more desired than they desire to join with his Majesty in any undertakings, especially in this. For they are sorry they understood so little the king of Spain's weakness in Queen Elizabeth's time, when her Majesty so affected their joining with her; and that now they know that his Majesty being greater in power will yet suffer such an enemy to all Christian princes, chiefly to those of his Majesty's own religion, to creep into his bosom: for all the greatness he hath he holds by courtesy of his Majesty, and to that end courts him; he knows he were undone else.

"To conclude withal [I] will infer some of the reasons which persuade to the undertaking of this design.

"The policy of Spain hath trodden more bloody steps than any state of Christendom. Look into the treaties and negotiations of his ministers abroad; you shall find as much falsehood in these as blood in the other. He never paid debt so truly as [to] those he employed in the corrupting of the ministers of other princes. He holds league with none but to have the nearer access to do harm by: and a match in kindred shall not hinder it when he intends his advantage once. He disturbs all Christendom with his yearly alarums and armadas, and yet doth less hurt to infidels and pirates than any, unless it be to get wherewithal to arm himself better against other Christian princes. These are motives wherein all Christian princes are interested, so as with reason they cannot oppose the design; nor will I think the most of them; he hath derived himself into such an hatred with them.

"Let us now betwixt his Majesty and the United Provinces consider how the particular causes of both nations do importune us both to the undertaking thereof.

"Who has been so thirsty of our blood as Spain? and who hath spilled so much of it as he? and who hath been so long our enemy? and who hath corrupted so many of our nation as Spain? and that with the help of the gold which by reason of the neglect of this design he doth still enjoy, to attempt our weak

* The case of French conquests.

ones and our false ones withal? Would you find a traitor of a sudden? Balaam's ass will tell you where: at the Spanish ambassador's door. And when? When they come from mass. And otherwise when too? Even when they treat the match with us. For his malice is so great he cannot hide it, nor will God I hope suffer him.

"Yet let us examine in reason now, if we be so charitable as to forget what is past, whether we may promise ourselves the assurance of his amity for the time to come or not: because peace with a true neighbour is a condition to be embraced. Nothing more certain than that we cannot promise it. His ambition to the empire so long as he holdeth the Indies will never die. The United Provinces are an object to which though he hath an eye yet he liketh not. What other things [so ever] we communicate with him in, we shall never be assured of him (such is the nature of his religion) so long as we differ in matters of faith. He knows well enough the peril he stands in if he be attempted by his Majesty and the United Provinces. Consider what suggestions these are to keep him thinking upon; and imagine then what his own heart will prompt him to do when he seeth time for it.

"Hitherto of the hurts that may be prevented by the enterprise: now of the fitness and honour of it to be an undertaking of his Majesty.

"He is the greatest islander of Christendom, therefore a navy is most proper to him. He is the defender of the faith, as well in understanding, learning, and godliness, as in title. Therefore the plantation of the true Church there is a sacred work that even by office as it were belongs to him. He is of a great and liberal mind; the Indies will afford him the means to exercise it.

"These considerations and the great multitude of his subjects do seem to invite him; and in every part considerable in the design we may find something to persuade us, that seems to be a kind of offer (both in religion, policy, and nature) preferred unto his Majesty as the prince the fittest for the entertaining of it."

Now whatever may have been the particular occasion upon which this paper was written, and whether or not it was ever urged upon the King in the shape of formal advice, there can be no doubt, I think, that it was written in earnest, and expresses Bacon's own opinion as to the

true policy of England at this conjuncture. The absence of any allusion whatever to the *invasion of the Palatinate* may be taken, I think, as a proof that the news of that had not yet arrived in England; therefore that it was before the end of August 1620. The absence of any allusion to the expulsion of Ferdinand and the election of the Count Palatine as king of Bohemia, makes it probable (though it does not perhaps decisively prove) that it was before the arrival of that news also; and therefore before September 1619. The mention of "Balaam's ass" in connection with "the Spanish ambassador's door" refers manifestly and unmistakably to a circumstance which happened early in March 1618–19. Rumours of a new Spanish armada greater than that of 1588, for what design everybody wondered and nobody could tell, were the talk of Europe during the same spring. The negotiation for a joint enterprise against the pirates had brought forth nothing. On the subject of the match they were still feeding the King with promises and excuses. All which circumstances point to the summer of 1619 as the most probable date of this warlike counsel; and I know of nothing to make that date improbable. Now this was the critical time. It was the beginning of the quarrel which as it was actually handled, issued in the Thirty Years' war. What would have been the issue if this counsel had been adopted at this time, I do not pretend to say; but it must have been something quite different. The struggle must have begun upon a different ground and for a different stake. It is not enough therefore to admit that Bacon was not responsible for originating the foreign policy which was pursued by England during these years; it must be admitted that he wanted to originate a policy the very opposite, a policy which would certainly have turned the whole current of affairs both at home and abroad into a different channel.

Then came the question concerning the Bohemian movement; but what advice Bacon gave on that I cannot tell. I only know that he had a discourse with the King on the subject at Windsor, which the King was heard to commend

afterwards "both for the method and the affection he shewed therein to his affairs in such earnest manner as if he had made it his only study and care to advance his Majesty's service;" and that about the same time the King finding Buckingham reading a letter from Bacon with a paper enclosed, eagerly took it out of his hands, and observed "that he had done like a wise counsellor, first setting down the state of the question, and then propounding the difficulties, the rest being to be done in its own time." What was the purport of the conversation or of the letter I am not further informed. I only mention the fact to remind you that Bacon did employ himself diligently in giving advice upon these questions, and that you must not infer that he made no effort to enforce his views merely because no record remains of it, or because a different line of policy was adopted. A few days afterwards the King called the Council together, not to ask their advice but for them to hear his determination: which when he had declared, "all the Board," we are told, "remained mute, there being very few among them that had other affections than to favour the lively embracing of the cause, both for the common good of the religion and the particular honour and interest of the state." So there was an end of that opportunity; which if it had been embraced might very possibly have enabled the Elector to maintain his new crown,—in which case, according to Ranke (Hist. of the Popes, p. 242), "the power of the house of Austria in Eastern Europe would have been broken, and the progress of Catholicism barred for ever."

The next year, as I have already mentioned, the invasion of the Palatinate put the question upon a new ground, and determined the King at last to take up arms. Three courses were proposed,—a conquering army,—that is, an army strong enough to reconquer the Palatinate; a diverting army; and an army of assistance. And I have found a paper,—(I think by Bacon, but I am not sure)—in which the heads of the consultation are briefly set forth. The writer's own opinion is not distinctly intimated: but he seems to have apprehended that the first course would

be rejected as too difficult, and the second (to which I should gather that he otherwise inclined) as not practicable without breaking peace with Spain, which the King was still resolved if possible to avoid. It remained therefore only to take due order for the third; upon which point he concludes with the following important caution:—

"For the command of these forces, the [choice of a] chief ought to be careful: wherein the dignity (if there be art in the person) is not the chief quality required; for no man is born a soldier: and where the private soldier is good, if the chief be not so, the army is ill. We may observe in the wars we have now relation unto, those of Bohemia and the Palatinate, that none becomes the greater soldier for being the greater prince. A king when it pleaseth his majesty may make a soldier a nobleman, but not a nobleman a soldier without long time of practice. It is the full experience of the man, together with his natural sufficiency, that does it.

"Of all enterprises, a war (when we resolve upon it) ought to be undertaken in earnest: which no man can do who takes not care what chief he makes: and it concerns his Majesty now principally as well by reason of the seriousness and weight of the cause as in regard of his Majesty's gracious disposition to peace, which is the true effect that a right war seeks, and the work that nothing by any means of man can so assuredly command and maintain as an army. A testimony whereof the world beholds in the United Provinces, whose perfection in armies brings their enemies home to their doors to desire a peace. From hence I conclude with this opinion, that his Majesty may be pleased to believe that for the continuance of peace, which he so sincerely and justly loves, it will be safe and necessary to provide and prepare really for a war."

If I am right in attributing this paper to Bacon, it contains probably the last piece of advice on the subject which he had the opportunity of giving. The question was referred (13th Jan. 1620–1) to a council of war, by whom a detailed report was drawn up upon the preparations necessary for sending 25,000 foot, 5,000 horse, and 20 pieces of artillery, to assist in recovering the Palatinate. But in the mean time another attempt was made to obtain the restoration of it by peaceable means. This led to the suspension

of hostilities on the part of England and to further promises and delays on the part of Spain, in which the next three or four years were wasted. We need not pursue the history, Bacon having now disappeared from the scene; except to add that when the new course of negotiation was at an end and the time was at last come for a final breach with Spain, he stole some hours from his favourite studies to strike another blow in favour of his old policy,—a policy which the errors of other people had so often put out of reach, and which the nature of things had so often brought within reach again. I allude to his "Considerations touching a War with Spain." I know you will hear that treatise spoken of as a party-pamphlet, written to flatter the new time. Believe nothing of the kind. Believe only that those who tell you so have either no knowledge of the subject or no belief in public spirit as a probable motive of human conduct.

I have now touched the principal questions of general policy at home and abroad with which Bacon as Chancellor and Privy-Councillor had to deal. But though it is to these that his attention must have been chiefly and most anxiously directed, they form but a small portion of the labours which his place entailed upon him. If you add to those which I have mentioned the many tedious and important questions which came before the Star Chamber in the years 1618, 19, and 20,—the proceedings against the Lord Treasurer Suffolk for malversation in his office; against the Dutch merchants for transporting gold illegally; against the Attorney-General Yelverton for drawing a charter for the city of London larger than his warrant justified; the great cause between Lady Exeter and Lady Lake, with its multitude of witnesses, examinations, exemplifications, etc., covering (they say) more than 9000 sheets of paper; and many smaller matters; in all of which Bacon had by his office to sustain the various and sometimes not easily reconcilable parts of councillor, manager, moderator, and Judge;—add again the perpetually recurring questions concerning the government of Ireland and the

plantation of Ulster, in which he always took a particular interest;—add the consultations and preparations for the expedition against the pirates, in which also he took an active part;—add questions of trade and commerce, of which some considerable ones were then in agitation;—add the half-yearly reports of the Judges upon the condition of the counties through which they passed in circuit,—a thing which Bacon held of high importance and to which he paid particular attention;—add his cogitations for the improvement of justice by the better regulation of the Star Chamber;* and for the strengthening of the administrative government by the establishment of standing commissions; which last would have anticipated our present constitution of government offices in its principal features;†—put all these things together, not forgetting that the Novum Organum was published in October 1620, and you have a man with his head and his hands full of public interests, who, having a thousand things to do and think of, may be the better excused if in a few things he did or thought amiss.

That month of October 1620 was the culminating point of Bacon's fortune, inward and outward. It must have been the season of highest joyful excitement that he had ex-

* "And because his Majesty shall see how I was occupied at Kew, I send him these Rules for the Star Chamber; wherein his Majesty shall erect one of the noblest and durablest pillars for the justice of this kingdom in perpetuity that can be, after by his own wisdom and the advice of his Lords he shall have revised them and established them. The manner and circumstances I refer to my attending his Majesty. The rules are not all set down, but I will do the rest within two or three days." 9 June, 1620. Works, vi. p. 247. The Rules referred to are lost.

† Works, vi. p. 249. If your Majesty will be pleased to publish certain commonwealth commissions; which, as your Majesty hath well begun to do in some things and to speak of in some others, so if your Majesty will be pleased to make a solemn declaration of them in that place, this will follow:

"First, that your Majesty shall do yourself an infinite honour, and win the hearts of your people to acknowledge you as well the most politic king as the most just. Secondly, it will oblige your commissioners to a more strict account, when they shall be engaged by such a public charge and commandment. And thirdly, it will invite and direct any man that finds himself to know anything concerning these commissions, to bring in their informations. So as I am persuaded it will eternise your name and merit, and that King James his commissions will be spoken and put in ure as long as Great Britain lasts; at least in the reign of all good kings."

perienced. The various labours of his life, hitherto protracted, obstructed, and defeated by so many accidents, but never abandoned, seemed then upon the point of coming all at once to harvest. The King was at last persuaded to take the step, which Bacon had so long and confidently advised; to throw himself frankly and boldly upon his parliament, and by sweeping away unpopular abuses with a liberal hand and putting himself at the head of a great, a common, and a popular cause, to take the best course for healing the breach which had for so many years obstructed the operations of government, and divided the commonwealth against itself. This promised to rectify the state of things at home. Abroad,—England, who had been lately falling out of her station in history and declining from her rank as leader of Protestant Europe, was about to resume her place among the nations, and to join the general stand against the counter-reformation which was beginning. This promised to turn the scale in favour of the reformed religion, and to merge internal dissensions in the struggle against a common danger. Last, not least, the proclamation and prospectus of the new philosophy was at length safely and happily delivered into the world—the philosophy which was to teach Man the true use of his understanding, and lead him by a certain path to the knowledge of all things which it is lawful for man to know. This promised endless benefits, in which all nations and kindreds and people would equally participate. Curiously enough, these things all fell out together within the space of two or three weeks. It was as if a man, having long laboured through doubtful and difficult ways, had suddenly found himself at the summit of his journey, from which he could see the end within reach and the road clear. For some time all things went well and seemed to be moving rapidly the right way. The Council were set earnestly upon the work of preparing for the coming parliament; and though the particulars of their consultations and resolutions have been for the most part lost, enough remains to show that they were bent upon the real and effectual removal of all grievances,—the doubts

turning only upon questions of time and manner.* At the same time he had the satisfaction of seeing his advice taken at last in the appointment of a Lord Treasurer in whom he had confidence; which gave him hope "that a number of counsels which he had given for the establishment of his Majesty's estate, *and had lain dead and buried deeper than this snow,* might now spring up and bear fruit." The result of the general election did indeed throw some shadow over the prospect so far as the probable temper of the Commons was concerned;† but nothing occurred to foreshadow trouble to his own fortunes. The King, in whose favour and confidence he had never stood higher, took this occasion to crown many private acknowledgments of esteem with a public testimony in raising him a degree higher in rank; an honour which, however worthless in our eyes, yet coming as the unsolicited reward of disinterested service was as the stamp upon the guinea, which proclaims though it does not make or increase the intrinsic value of the metal; and was to be received accordingly. Seven steps in dignity he had already risen during this reign: "this was the eighth rise or reach; a diapason in music; even a good number and accord for a close." . . . "Then I must say (he proceeds) *quid ergo retribuam?* I have nothing of mine own. That that God hath given me I will offer and present unto your Majesty; which is a joyful heart, a studious thought, an incessant endeavour, and the best of my time, which I hope shall conclude with your favour and survive in your remembrance."‡ Neither could he see in the aspect of either house of parliament any shadow of the doom which awaited

* Bacon seems to have inclined to *prevent* complaints by removing the obnoxious monopolies at once before parliament met. But the prevailing opinion was for waiting for the complaints, that the concessions might have more value. See Works, v. p. 546.

† "For if his Majesty said well that when he knew the men and the elections, he would guess at the success,—the prognostics are not so good as I expected; occasioned by late occurrences abroad and the general licentious speaking of state-matters, of which I wrote in my last." 16 Dec., 1620. Works, v. p. 547.

‡ So he had first written it. He then struck the sentence out and altered it as in the printed copy. Works, vi. p. 272.

him. In the Upper House "they seemed (he said) as to take me into their arms, finding in me ingenuity, which they took to be the true straight line of nobleness, without crooks or angles." And in the Commons, shortly after, when they saw him reappearing on his new stage in the same character which they had themselves so often put upon him—being chosen as the mouth and messenger of both Houses for the petition which they had most at heart, the petition concerning Religion—"the old love revived and they said he was the same man still, only honesty was turned into honour." *

Perhaps his heart had now risen a thought too high, and was in danger of being betrayed by too much felicity into forgetfulness of its past errors and mortal infirmities. Perhaps it was time for the mysterious Nemesis, daughter of Ocean and of Night, to interpose her veto and remind him that human prosperity, however innocently and moderately borne, must not the less be paid for in adversity. Certainly the functions of that power, as he had himself described them eleven years before, were never more signally illustrated, nor in the person of a more illustrious victim. "Nemesis," he said, "is represented with wings, because these turns of fortune are mostly sudden and unforeseen; the records of all time showing that great and wise men have commonly perished by the dangers they thought least of." † And so most certainly it was with himself when in the middle of his fullest sea and fairest weather he found himself suddenly among the breakers, and with all his freight of great purposes and prosperous hopes,—memories of good deeds past, means of good services to come,—stranded, wrecked, and utterly cast away upon an offence of which for some time he could hardly be brought to believe that he was guilty. He carried up the message of Religion on the 17th of February: he was accused of corruption on the 15th of March. Nemesis wore a crown too as well as wings: and this (he said) was an allusion to the envious and malignant

* Letter to the King, March 25, 1621. Works, v. p. 551.

† De Sapientiâ Veterum.

disposition of the vulgar; it being commonly seen that when the fortunate and the powerful fall, the vulgar exult and set a crown upon the head of Nemesis. And so again it was with himself. The Nemesis that overthrew Bacon wears her crown to this day, and hardly a man passes by but he must add a wreath to it.

Of the true nature of his offence, the amount of moral blame which it really involved, the manner in which he met the charge, and the accidents of the time which made it fall so heavily upon his reputation and fortunes, I have already said enough. Though surprised and incredulous at first, he was not long in understanding the whole length and breadth of his mischance: and to a man who was not a worldling, I suppose a more mortifying and irritating mischance could hardly have happened. Had it been merely a political overthrow it would have been mortifying enough, because of the issues which were at stake. Had the loss of fortune only and of reputation in the world's eyes been added, especially if in consequence of any negligence or oversight of his own, it would have been so much the worse. But still he would have had Job's consolation: he could have boldly stood upon his integrity and challenged censure. But to see all go, and to feel that he had only himself and his own fault to blame, even though the blame were not much in itself, was a terrible catastrophe, when one considers all that it involved. A little leaven leaveneth the whole lump. That little drop of admitted guilt changed the whole colour of his life, past and to come. All his life he had had an eye to the future as well as to the present; he had been labouring to set patterns for imitation, and to give the weight of his example and authority to precedents of reform: and I am persuaded for my own part that, if he had died before Christmas 1620, his example and authority upon all questions of business, politics, administration, legislation, and morals, would have stood quite as high and would have been as much studied and quoted, and with quite as good reason, as upon questions purely intellectual. All his life he had been studying to know and to speak the truth;

and I doubt whether there was ever any man whose evidence upon matters of fact may be more absolutely trusted, or who could more truly say with Kent in Lear—

> "All my reports go with the modest truth;
> Nor more, nor clipp'd: but so."

All his life he had thought more of his duty than of his fortune; setting an example of unwearied alacrity in all willing service, of moderation in personal claims and pretensions, of cheerful submission under personal disappointments; doing with his heart whatever his hand found to do, without consideration of reward. It must have been a bitter hour when he looked round him and saw that all this was to go for nothing or worse than nothing; that for his best virtues he could never more either ask or expect credit with the world, but must expect on the contrary that they would be turned to his prejudice, each virtue being laid to the account of the vice which it most resembled. The fatal word "corruption" was written indelibly against his name, and he knew that all his actions would be interpreted by the world accordingly—that is, in the worst sense; willing service would pass for servile officiousness; honourable desire of station and power, for mercenary and selfish ambition; professions of honesty and disinterestedness, for hypocritical affectation; his ways would be pointed at as examples to be shunned, not followed; his words and judgments as to be suspected, not believed. *Corruptio optimi pessima.* He knew the nature of popular judgment too well to look for any better issue. No wonder that the shock, especially coming upon a weak body already overtasked with business, affected his health. He became very ill; so ill that he thought himself in present danger. In a last will * dated the 10th of April 1621, and drawn with evident haste, he bequeathed "his soul to God above by the oblation of his Saviour; his body to be buried obscurely; his name to the next ages and to foreign nations:" and then, "thinking of

* Additional MSS. Brit. Mus. 4259. A copy in the hand of John Locker, editor of Stephens's second collection of letters, 1734.

his account and answer in a higher Court," he made his silent appeal from earth to heaven—from those with whom explanation was hopeless to Him before whom concealment was impossible. That "prayer or psalm" which was found afterwards among his papers, and which Addison quoted as resembling the devotion of an angel rather than a man, was certainly composed about this time;* and if you would understand its full significance, you must take it in connexion with these circumstances. It is here, not in the comments of the court or of Paul's, that you must look for a true picture of the state of his mind at this crisis.

"Most gracious Lord God, my merciful Father, from my youth up my Creator, my Redeemer, my Comforter. Thou, O Lord, soundest and searchest the depths and secrets of all hearts: thou knowledgest the upright of heart, thou judgest the hypocrite, thou ponderest men's thoughts and doings as in a balance, thou measurest their intentions as with a line, vanity and crooked ways cannot be hid from thee.

"Remember, O Lord, how thy servant hath walked before thee; remember what I have first sought and what hath been principal in mine intention. I have loved thy assemblies, I have mourned for the divisions of thy church, I have delighted in the brightness of thy sanctuary: this vine which thy right hand hath planted in this nation, I have ever prayed unto thee that it might receive the first and the latter rain, and that it might stretch her branches to the seas and to the floods. The state and bread of the poor and oppressed have been precious in mine eyes: I have hated all cruelty and hardness of heart: I have (though in a despised weed) procured the good of all men. If any have been mine enemies, I thought not of them; neither hath the sun almost set upon my displeasure; but I have been as a dove, free from superfluity of maliciousness. Thy creatures have been my books, but thy scriptures much more. I have sought thee in the courts, fields, gardens, but I have found thee in thy temples.

"Thousands have been my sins and ten thousand my transgressions: but thy sanctifications have remained with me, and my heart through thy grace hath been an unquenched coal upon thine altar. O Lord, my strength, I have since my youth

* See a letter from Mr. Chamberlain to Sir Dudley Carlton, 18th April, 1621—State Paper Office.

met with thee in all my ways, by thy fatherly compassions, by thy comfortable chastisements, and by thy most visible providence. As thy favours have increased upon me, so have thy corrections; so as thou hast been alway near me, O Lord; and ever as my worldly blessings were exalted, so secret darts from thee have pierced me: and when I have ascended before men, I have descended in humiliation before thee.

"And now when I thought most of peace and honour, thy hand is heavy upon me and hath humbled me according to thy former lovingkindness, keeping me still in thy fatherly school, not as a bastard but as a child. Just are thy judgments upon me for my sins; which are more in number than the sands of the sea, but have no proportion to thy mercies: for what are the sands of the sea to the sea, earth, heavens? and all these are nothing to thy mercies.

"Besides my innumerable sins, I confess before thee that I am debtor to thee for the gracious talent of thy gifts and graces; which I have neither put into a napkin, nor put it (as I ought) to exchangers where it might have made best profit, but misspent it in things for which I was least fit; so as I may truly say, my soul hath been a stranger in the course of my pilgrimage. Be merciful unto me, O Lord, for my Saviour's sake, and receive me into thy bosom, or guide me in thy ways."

Such were the secret meditations of his heart during the interval between the charge and the sentence.

When all was over—having recovered from his long sickness and been released from the few days' imprisonment which followed,—he was at leisure to take a survey of his position and prospects, and to consider how he might meet his new fortune as best became him, by turning the means and hours which remained to the best account. It was not difficult for him to choose his course if he could but command the means. "Me vero jam vocat et ætas, et fortuna, atque etiam Genius meus, cui adhuc satis morose satisfeci, ut excedens e theatro rerum civilium literis me dedam, et ipsos actores instruam et posteritati inserviam. Id mihi fortasse honori erit, et degam tanquam in atriis vitæ melioris." * The difficulty which lay in the way was one which historians and biographers unfortunately consider too

* Letter to Gondomar, 6th June, 1621.

vulgar to be mentioned. It was the want of money; the difficulty of obtaining the indispensable conditions and implements of study,—books, servants, quietness of mind, clothes, bread. A difficulty however it was, of which, if you would understand his case truly, it is quite necessary to admit both the reality and the magnitude. That the pecuniary embarrassment into which his sudden fall plunged him, while it was the least part of his affliction, was nevertheless an embarrassment out of which it was most necessary to emerge if possible, though it was by no means easy to find a way, is a fact not to be blinked. He had good grounds for hope, however, that both the King and Buckingham, who knew him too well to believe that he deserved to be a castaway, would exert themselves to remove this obstruction; which threatened otherwise to clog all his movements and either to quench or engross all his activities. The King had understood and pitied his case, had said that "he would not have him know what want meant," and by applying to him within a few days after his liberation for advice upon a matter of state, almost as if he had been still a Privy-Councillor, had shown that his respect for his character was not gone. Buckingham had of his own accord held out hopes not only of a complete pardon and some help for his debts, but also of an annual pension of two thousand—possibly three thousand—pounds. This would have been enough to furnish him for the life of studious retirement in which he now desired to end his days. It remained for himself to justify the promised bounty by showing that it would not be thrown away. With this view he looked round for some fit employment which might serve as an earnest of his future course. Had he been in a condition to consult himself alone, he would no doubt have proceeded with the second or third part of the "Instauratio," which still held its place in his own judgment as the work fittest for himself and most profitable for the world, and would have made that his principal business. But, as things stood, it was necessary to consider also what the world would think; and the world had no such faith in the new philosophy as to take

the promise in exchange for pensions. Looking therefore through the list of deficiencies noted in the Advancement of Learning, for some work that could be executed speedily and would be appreciated at once, his thoughts settled chiefly upon two, as especially suitable both for himself and for the time—a history of England from the union of the Roses to the union of the Kingdoms; and a digest or recompilement of the laws. Both were works which he had long wished to see undertaken, and would probably long ago have undertaken himself, but that he wanted leisure for the one and assistance for the other. For assistance he must still wait upon other people's pleasure; but leisure, for a time at least, was now at his command. Accordingly he applied himself at once to the history of Henry the Seventh, and proceeded in it with such diligence that within less than five months after his discharge from the Tower, he was able to present the King with the finished manuscript of a work which (in spite of the apologetic or disparaging judgments of modern critics) I believe to have been then, and to be still, the only specimen of English history which deserves to stand by the side of Tacitus and Thucydides. And as soon as it was published (which, as the King kept the manuscript by him three months, was not till the following March) he made a fresh proffer of his service in compiling the Digest of Laws; if it were thought fit to employ him in such a work and to furnish him with the requisite assistance.

Having given such substantial proof both of his will and of his ability to become a labourer in such work as might fairly deserve the only reward he asked, namely the means of continuing to work, he paused for awhile to see what would come of it. But he did not pause in idleness. He employed the interval in redoubled efforts to advance the object which he had now most at heart,—the collection of that natural and experimental history, without which he was more and more persuaded that no progress of any consequence could be made in the true philosophy, and which he had even learned to regard as more urgent and

indispensable than the Novum Organum itself.* To this labour he now bound himself by a kind of voluntary task-work, resolving that during the next half-year every month should if possible show some definite portion actually done: "illud perpetuo et maximo cum ardore (qualem Deus mentibus, ut plane confidimus, addere solet) appetentes, ut quod adhuc nunquam tentatum sit id ne jam frustra tentetur."† And pleasant it is to know that, whatever may now be thought of the positive value of this portion of his labours, (which as yet certainly experience has not approved,) his own ardour never cooled nor was his confidence ever shaken; but that in the hope and heat of that pursuit, which lasted till his death, he found a never-failing refuge from the harassing cares and gathering distresses of his worldly lot,—which to say the truth he sorely needed.

Without some such refuge even *his* spirit could hardly have borne up against embarrassments accumulating and hopes disappointed or deferred. Nemesis was not yet satisfied with her sacrifice. At Michaelmas 1622 his distresses, far from being relieved, were yet further aggravated by the stoppage of his pension and the sequestration of his farm of the petty writs—which made up together more than two-thirds of his remaining income. In the following November he was indeed cheered with a deceitful glimmering of better things. His income (it seems) was restored. Buckingham obtained for him from the King a warrant to certain principal officers, couched in gracious words and expressing regret that more effectual relief could not then be afforded by which they were directed to assist him in making a favourable composition with his creditors. The King also promised that when he returned next to Windsor he would admit him to his presence; and an interview

* "Itaque huc res redit, ut *organum nostrum*, etiamsi fuerit absolutum, *absque historia naturali non multum*, *historia naturalis absque organo non parum*, instaurationem scientiarum sit provectura. Quare omnino et ante omnia in hoc incumbere satius et consultius visum est."—Auctoris monitum; printed in 1622. Works, viii. p. 262.

† Id. Ibid. p. 261.

took place between them, probably at Christmas, certainly before the Lady-day following. At that interview he was received with respect and tenderness; the King addressing him—(such at least is his own account in a letter to Gondomar, and it is countenanced by an expression in a letter to the King himself written a few days before)—not as a criminal, but as a man overthrown by a tempest; not without large and as it seemed affectionate acknowledgment of the industry and integrity which he had constantly shown in the course of his service. These things promised fairer days, but it was a deceitful promise. Though I have no doubt that the King really meant all he said and really felt all he professed to feel, yet the times were cross; and Bacon suffered the usual fate of men who have once fallen out of their rank. Out of sight is always more or less out of mind; and it was the interest of those who were now in authority, and most in the King's ear and eye, to keep him down. Buckingham was away in Spain. Williams, the new Lord Keeper, interfered more than once to intercept the returning sunshine. Cranfield, the new Lord Treasurer, and now Earl of Middlesex,—a low man risen high,—threw delays and hindrances in the way. The King was grown old, infirm, and irresolute. The Exchequer was at a low ebb, as usual. Suitors, as usual, abounded, and suits of all kinds were bespoken. And (not to trouble you with the tedious detail of hopes which came to nothing) it was not till November 1624 that Bacon obtained anything whatever in the way of pecuniary relief. On the 17th of that month he received a warrant for three years' payment of his pension in advance; upon some condition however which is not distinctly explained; for he speaks of it as "a *bargain*, with an advance only." And this, so far as I can discover, was all the pecuniary relief which he ever received. He lived a year and a half longer; but his embarrassments continued to the last; and at his death he was still in debt to the amount of 22,371*l.* Even after his death the same relentless Nemesis pursued him: for the executors and supervisors whom he had named to

administer his effects, with an earnest entreaty "that, although he knew well it was matter of trouble and travail to them, yet, considering what he had been, they would vouchsafe to do that last office to his memory and good name, and to the discharge of his honour and conscience,—that all men might be paid duly their own, and that his good mind, by their good care, might effect that good work;"—these executors and supervisors renounced or neglected the office, and left it to be discharged after considerable delay by two of his principal creditors: a neglect which may probably account for the failure of his estate to yield that "good round surplusage, over and above the payment of his debts and legacies," which he expected and destined for the foundation of two lectures in natural philosophy, one in Cambridge and one in Oxford: for it is obvious that the sum to be raised by the sale of such places as Gorhambury and Verulam House would depend much both upon the speed and the judgment used in disposing of them.

As a warning to the worldly therefore, the penalty which Bacon's fault entailed upon him could hardly have been more impressive. A fortune more miserable and degrading in the eyes of those whose heart is with their treasure and their treasure on the earth there could hardly be, than that in which he spent his last days: hope of relief, just enough to keep him in the attitude of a suppliant; admitted fault, just enough to prevent him from assuming the language of just remonstrance; distress and degradation, just *not* enough to awaken a reaction of popular sympathy in his favour.

> "As we do turn our backs
> From our companion thrown into his grave,
> So his familiars to his buried fortunes
> Slink all away; leave their false vows with him
> Like empty purses pickt; and his poor self,
> A dedicated beggar to the air,
> With his disease of all-shunn'd poverty,
> Walks like contempt alone."

The story of his worldly condition in these years,—a condition under which the heart of a brave man whose heart was set on worldly things might well have broken,—was a warning to the Bench quite as impressive as the corrupt Judge's skin.

Had this been all, the tale would have ended dismally and drearily enough; for though that warning was salutary and needful, it might surely have been given in the person of a meaner man, and would have been but a poor fruit to gather from such a life as his. But the heart of Bacon was made for other service than that; his adversity was sent for sweeter and nobler uses; his example was to point another moral, not less salutary, and far brighter and more sublime. For myself at least, much as one must grieve over such a fall of such a man, and so forlorn a close of such a life, I have always felt that, had he not fallen, or had he fallen upon a fortune less desolate in its outward conditions, I should never have known how good and how great a man he really was,—hardly, perhaps, how great and how invincible a thing intrinsic goodness is. Turning from the world without to the world which was within him, I know nothing more inspiring, more affecting, more sublime, than the undaunted energy, the hopefulness, trustfulness, clearness, patience, and composure, with which his spirit sustained itself under that most depressing fortune. The heart of Job himself was not so sorely tried, nor did it pass the trial better. Through the many volumes which he produced during those five years, I find no idle repining, no vain complaint of others, no weak justification of himself; no trace of a disgusted, a despairing, or a faltering mind. The only mark which distinguishes the compositions of that period from those of his most flourishing days, is a style more concise, rapid, and collected; the hurry of a man who feels his days crowding towards their close, and who cannot afford to look aside from his object to the right hand or to the left. And let no one think that it was moral apathy that hardened him, or hope of fame that flattered him, or pleasure in the exercise of intellectual power that engrossed

him, into forgetfulness of his mortal condition, and enabled him to sustain his spirit at that height. Moral apathy with a temperament so extremely delicate and sensitive as his was impossible; of fame no man knew better both the true value as a means and the utter vanity as an end; not to add that, had he studied the mere enjoyment either of glory or of intellectual activity, he would have sought for it elsewhere than in the dry and ill-appreciated drudgery to which his task now chiefly chained him. It was not in the gifts or the glory of them that the secret of his strength and consolation lay, but in the purpose to which they were dedicated;—a purpose which carried him far beyond the horizon of his own interests; a purpose so great and of such a nature that in the presence of it personal joys and sorrows were as nothing; a purpose from the accomplishment of which he expected for himself nothing, for mankind everything. "Res enim humani generis agitur; non nostra." It was because his mind,—collected in a great and last effort * to save this purpose from perishing, and intent upon the Hope that like

> "a poising eagle burn'd
> Above the unrisen morrow,"—

had not leisure to dwell upon himself, that it enjoyed to the last, and, carried with it to the very gates of death, that freshness, freedom, and unclouded brightness, which contrasts so signally with the condition of his body and estate. In virtue of this it was, that as his stock of worldly friends and worldly treasures ran more and more low, he enjoyed in greater fulness and security than ever those other friends and treasures which the poets tell us that intrinsic goodness and greatness hold in their own right and cannot be deprived of.

> "Goodness and greatness are not means but ends:
> Hath he not always treasures, always friends,

* "Hæc igitur res ipsa est quam paramus *et ingenti conatu molimur*," &c. —*De Augm.* v. 2. Published in 1623.

> The great good man? three Treasures, LOVE, and LIGHT,
> And CALM THOUGHTS, regular as infant's breath;
> And three true Friends, more sure than day and night,
> HIMSELF, his MAKER, and the ANGEL DEATH!"

It was in the undiminished abundance of these blessings that he recognized those "extraordinary tokens of God's favour in his adversity" of which he often speaks. It seemed like the earnest of a favourable answer to his own aspiration in the writer's prayer,—an aspiration of his early youth,*—"IF WE LABOUR IN THY WORKS WITH THE SWEAT OF OUR BROWS, THOU WILT MAKE US PARTAKERS OF THY VISION AND THY SABBATH."

And let that be the moral of the story: for I have nothing more to say.

A.

Then I am now at liberty to make up my mind, and pronounce judgment?

B.

Yes; what do you think?

A.

You must give me a little time to consider; for it has been a long story; and between new and old impressions I hardly know what I think.

B.

Take your own time; and only remember that neither you nor I nor any man can have any rational motive for deceiving ourselves in such a matter as this. Our interest is to feel *truly* about it, and we have no other interest. To think better of a man than he deserves, though it be a fault leaning to virtue's side, is nevertheless a fault and a folly, as well as to think worse of him; and any attempt to

* See Meditationes Sacræ. Published in 1597.

seduce the judgment either way, as it is a vice in all cases, so in the case of a man like Bacon—the great lover of the *lumen siccum*, the great enemy of imposture, the hater of lies, but especially of "the lie that sinketh into the mind and settleth there,"—it is a kind of impiety.

EVENING THE NINETEENTH.

B.

Well, are you ready to pronounce judgment?

A.

I am ready to tell you what my present impression is. A critical and conclusive judgment will require a review of the whole case from the beginning; as well as a little overhauling of your authorities, which I have all along taken on trust. But if you will not hold me bound by my present conclusions, I will tell you what they are.

B.

It is exactly what I want to hear. My authorities I think will bear examination; and though I must suppose that I have made some mistakes both positive and negative, yet I can scarcely suspect myself of having either misapprehended or overlooked anything that materially affects the main question. But I agree to leave you perfectly free.

A.

To begin then with the larger features of the case, which have hitherto governed in a manner the interpretation of the rest; my impression is that you have established several points of great consequence.

First for the bribes. Our discussion of this part of the

case is still fresh in my memory, and I have no more questions to ask. I admit that the proof of "corruption," in the worse sense of the word,—viz. of perverting justice for money or money's worth,—fails altogether; therefore that whatever interpretation of other passages in Bacon's life, whatever inference as to his probable motives on other occasions, depends upon the assumption that he was capable of corruption *in that sense*, must be given up. I can believe, and I do believe, that Bacon was a conscientious and just Judge. The imputation which the bribery case does fix upon him is that, in cases where public opinion was not strong enough to keep the conscience awake and up to its work, he was capable of what you call moral negligence or inattention: which is no more than may be said of most of us; probably of all, if we did but know it.

Next for the charge of servility,—of using the authority of his office or the force of his talents for purposes of injustice or oppression. This also we discussed at great length; and I am bound to admit that, from anything I know of his conduct as Attorney or Solicitor, no material impression to his disadvantage remains upon my mind.

Third comes the popular imputation of ingratitude to Essex; an imputation sufficient, if made out, to prove that he had something in him positively and essentially bad; and to deprive him, in cases where the evidence admits of a better or a worse interpretation, of many favourable suppositions. Upon this point my recollection of the particulars is less distinct. I suppose however that if I were to go over them again, I should be more apt to take your view than I was before. For I well remember that I entered on that part of the case with a strong impression against him, and fought hard to maintain it; believing as I then did, that he was a man full at any rate of worldly thoughts and aiming at worldly ends, and therefore lying under a natural suspicion of that kind of worldly vice. I remember that even while I laboured under that prejudice I was unable to sustain the charge; and now that the

prejudice is removed and the *primâ facie* presumption lies the other way, I fancy I should cordially sympathize with you in the interpretation which you put upon that passage in his life, and which I then reluctantly admitted to be consistent and plausible.

These three great points being set aside then, I have to consider what the rest amount to.

But here I meet with a new difficulty. Though I have heard all that Macaulay has thought it necessary to say for the establishment of his case, I have no means of knowing how much more *might* be said on that side. Had he established or half established the points for which he was contending, it would have been really unnecessary to press the case further. The raising of minor questions would have merely encumbered his argument without adding any weight to it. It is natural therefore to suppose that he has intentionally passed over many objections which he could have made; also that there may be many more that he did not know of; for it is very clear to me that his knowledge of the subject was after all very superficial. You, it is true, have gone carefully into all the questions you have met with, and I do not doubt that you have decided them as you think candidly, and represented them as you think fairly. But with all your pains to be impartial, I must nevertheless consider you as an advocate with a bias in your client's favour, and you cannot help giving more weight and prominence to the evidence which tells for him than to that which tells against him.

There are some points, however, which I do think you have established beyond contradiction.

The popular notion that Bacon was a man of selfish purposes and vulgar ambition, a seeker of wealth and greatness for its own sake, is certainly untenable. The great and favourite object of his life cannot by possibility bear that character. The slow growth of his fortunes is scarcely reconcilable with the supposition. And indeed his whole

course through all the changes of his worldly condition is in that respect of one tenour. Whatever doubts may be entertained as to the means by which he occasionally tried to bring his ends about, it cannot be reasonably doubted that the ends themselves were worthy and patriotic, and lay quite out of himself. And this is a fact of great consequence. For it is certainly true that though good ends do not *justify* bad means, they do make them (as far as the character of the actor is concerned) much *less* bad. They presuppose less evil in the character to begin with; and their reaction upon it afterwards is less injurious.

But now what shall we say as to the laxity which is imputed to him in the use of means? Here also I confess myself staggered, if not convinced. For though I remember that there were several points of this kind upon which I reserved my opinion, thinking that they were capable of a worse interpretation or deserving of severer censure than you bestowed upon them, yet I do not find it easy to remember what they were. And certainly the main features of his policy and ways of dealing, in respect of the means used or recommended, no less than of the ends aimed at, belong to a character the very reverse of what is called Machiavellian; insomuch that when in one of his essays he recommends princes to choose for their counsellors such men as "are in their nature faithful and sincere and plain and direct, not crafty and involved," one might almost suspect that he was drawing from himself. It is true too that in a career so beset with temptations and difficulties, one or two errors are not enough to justify an inference fatal to the whole character. Whatever may have been his natural disposition, it is hardly to be supposed that he could have got through forty years of the week-day work of public life spent in courts, parliaments, and government offices, without occasional deviations from the straight line. The most honest man that ever was could hardly pass such a career with his thoughts always on his tongue, or bear to have the inside and the outside too strictly compared. But all

this belongs to the difficult and dangerous question concerning the lawful limits of dissimulation; which I agree with you that it is not desirable to define. Only one may say in general, that the experience of man in society hardly warrants us in looking for a time when nothing but the truth shall be spoken between neighbour and neighbour; and with regard to Bacon in particular I will confess thus much: From what I now know of him I am so far from thinking that he was more lax in this respect than his brethren, that I could almost believe the chief difference in point of honesty between him and other honest men to have lain in this; that he had less, not of the substance, but only of the cant, of morality; not that he told more lies to his neighbour, but only that he told fewer to himself; not that he was more given to practise corrupt arts, but that he was less afraid to call them by their true name.

For another kind of veracity, which is certainly much rarer than the last (though the breach of it can never be rightly excused, and does a great deal more mischief,)—I mean, accuracy in the statement of facts—Bacon's reputation, if one may judge by the coolness with which most of our historians set his evidence aside, stands low in the world at present. You, on the contrary, cite it as one of his most conspicuous virtues. Upon this point I can only say that I do not remember any material inaccuracy of which he stands convicted, and that all the cases which have come before us seem to bear out your opinion; while for that highest and rarest veracity of all, which alone deserves to be called the love of truth,—the veracity which extends beyond the speech to the thought, and makes a man desirous above all things not to believe anything that is not true,—it is a virtue for which most men will readily give him credit, and without which indeed his authority as a *thinker* could not have kept so fresh through two centuries, as we see that it has done.

Upon the whole, then, you seem to have convinced me

that he was a man whose nature was unselfish, whose objects were worthy and patriotic, whose ways of dealing were in the main fair and open, and whose veracity (as this world goes) was of a very high order. All of which sounds like the description of a better man than most of us.

> "And be it said he had this excellence,
> That undesirous of a false renown
> He ever wish'd to pass for what he was;
> One that swerved much and oft, but being still
> Deliberately bent upon the right,
> Had kept it in the main; one that much loved
> Whate'er in man is worthy high respect,
> And in his soul devoutedly did aspire
> To *be* it all, yet felt from time to time
> The littleness that clings to what is human,
> And suffer'd from the shame of having felt it."

What is it then, you will ask, that I miss in him? The thing I still miss in him is that energy and impetuosity of purpose which belongs to the Luthers and the Cromwells; the faith in what is right which refuses to hold parley with what is wrong; that confidence in himself which should have made him absolutely refuse to play a subordinate part, or to employ the power that was in him upon any object less than the highest that he knew of; and should have impelled him to reject as unworthy of himself all those employments which we now regret as unworthy of him. I still doubt whether he could have been a martyr. I am aware indeed that your great *thinkers* stand under a disadvantage in that respect; that a man who has attained a just sense of the uncertainty of all human conclusions cannot easily have a martyr's faith in any conclusion of his own; and that had such heroic impetuosity been a part of Bacon's character, and driven him (as it most likely would) into active life, it would probably have driven him far on in a wrong path, contracting his intellectual horizon, drawing his judgment all on one side, and making him little better than a great party-leader. Had he written essays, they would have been

long since dead, as Puritan sermons are; had he written political tracts, they would have been as little to the purpose of the next ages as Milton's are. I acknowledge also that in the intellectual vocation which he chose as more peculiarly his own, he did show much of that heroic and uncompromising constancy to a great idea, which in his civil career I find wanting. Yet for all this, the fact that he was content to take a part in politics at all except as a leader or alone, seems to me to imply some want in him of the true heroic element, some weakness of character, or some tincture of more worldly motive.

B.

That is to say, his is not the type of character which you most admire. Virtues of a different kind move you more; errors of a different kind shock you less. Errors of violence, narrowness, and over-confidence, diminish your respect for a man less than errors of modesty, charity, diffidence, and compliance. Be it so; it is a matter of taste. I always told you, that after we were all agreed as to what Bacon *was*, we should still differ in our feelings towards him; that some of us would like him better than others. Indeed if I had set forth his character so as to be admired by all men equally, I should only infer that I had not described a real man. However, when I consider your judgment as the result of a single hearing of the case, I am very well satisfied with it. And though I do not quite agree with you in placing the violent virtues so much above the others, or in thinking that the servant's part must necessarily misbecome the hero, yet in your absolute estimate of Bacon's character you go along with me quite as far as I could expect; far enough indeed to enable and induce you to turn to its proper use the legacy which he left to mankind. You will feel that his evidence is on all questions entitled to respectful consideration; that his opinions on all subjects deserve to be diligently inquired into and seriously weighed; that his example is in all cases full

of instruction, and in most cases profitable for imitation. And it is with a view to these things that his character does in fact chiefly concern us. What he wrote is written for our learning. So long as we use it rightly for that purpose, it matters little what we think of him; nothing at all to him, not much perhaps to ourselves. But as you come to know more of him, I think you will learn to like him better.

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